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CONTRIBUTIONS TO INTERNATIONAL LAW  
AND DIPLOMACY

Edited by ARNOLD D. McNAIR, C.B.E., LL.D.

Fellow of Gonville and Caius College and Reader  
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Cambridge

A GUIDE TO  
DIPLOMATIC PRACTICE

**CONTRIBUTIONS TO  
INTERNATIONAL LAW AND DIPLOMACY**

Edited by **ARNOLD D. McNAIR, C.B.E., LL.D.**

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# A GUIDE TO DIPLOMATIC PRACTICE

(BY THE LATE *Mason*  
RT. HON. (SIR) ERNEST SATOW

G.C.M.G., LL.D., D.C.L.

FORMERLY ENVOY EXTRAORDINARY AND MINISTER  
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THIRD EDITION

REVISED BY

H. RITCHIE, C.M.G., O.B.E., I.S.O.

FORMERLY TECHNICAL ASSISTANT IN HIS MAJESTY'S  
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## PREFACE TO THIRD EDITION

THE late Sir Ernest Satow, who died on August 26, 1929, published his "Guide to Diplomatic Practice" in 1917. To its preparation he brought legal qualifications of a high order, an extensive knowledge of the writings of earlier authorities, and the experience of a long and distinguished career in His Majesty's Diplomatic Service. In an editorial introduction to the first edition the late Professor Oppenheim said that the intention was to produce a work that would be of service alike to the international lawyer, the diplomatist and the student of history, and remarked that it was unique with regard to its method of treatment of the subject, as well as the selection of the topics discussed and in the amount of original research which it embodied. The work deservedly attained a high reputation, and its widespread circulation led to the issue of a further edition in 1922.

Since the date of the original publication many changes and developments have occurred. Some matters of former importance have receded into the background ; others have arisen demanding inclusion in a work of this kind. In preparing a third edition considerable revision has been found necessary. The long lists of congresses and conferences, dating from 1648, which were set out in the former edition have been replaced by a chapter descriptive in general of such assemblies, supplemented by outstanding instances of the numerous conferences held within recent years. Similarly, events of an earlier epoch which were narrated in the chapters on good offices and mediation have been omitted, these subjects being included with others in a series of chapters on the League of Nations. The chapters on diplomatic immunities have been largely extended, prominence being given to the views of modern writers and the decisions of courts of law in various countries. The chapters on treaties and other international compacts have also undergone revision, former instances being replaced by others more recent ; while a chapter has been added on the British Commonwealth of Nations. But

in essential respects the historical outline and substance of the original work are preserved, though often summarised, and sometimes amplified by the inclusion of new matter. It has been possible thus to bring the present edition within the compass of a single volume of convenient size for reference, and it is hoped that in this revised form (which has necessitated the renumbering of the paragraphs) it will continue to serve the useful purposes which the late Sir Ernest Satow had in mind at the time of his original publication.

The editor desires to express his grateful acknowledgment of the help given by Mr. Stephen Gaselee, Librarian and Keeper of the Papers at the Foreign Office, at whose request the work was undertaken, and by former colleagues and friends who have contributed to the revision with suggestions and information. Whilst access has been permitted to official records, it must be understood that the work is entirely unofficial, and that the views expressed in the course of it are not necessarily those of the British Government.

LONDON,  
*April*, 1932.

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## PRINCIPAL ABBREVIATIONS OF BOOKS, ETC. QUOTED IN THE TEXT

THE books referred to in the Bibliography are mentioned in footnotes, and a complete list is given in the Appendix, page 496. Certain of them, however, which are often referred to are indicated in the footnotes in an abbreviated form as follows :

<i>Annual Digest</i>	<i>Annual Digest of Public International Law Cases.</i> Edited by McNair and Lauterpacht. Two vols. have appeared so far : 1925-1926, and 1927-1928.
<i>Br. &amp; For. State Papers</i>	<i>British and Foreign State Papers.</i> Vols. 1 to 125 have appeared so far.
Ch.	Chancery.
Clunet	<i>Journal du Droit international privé et de la Jurisprudence comparée ; Journal du Droit international</i> from 1915.
Cours de La Haye	<i>Académie de Droit International. Recueil des Cours.</i>
de Castro y Casaleiz	<i>Gula práctica del Diplomático Español</i> (2nd ed., 1886).
de Maulde-la-Clavière	<i>Histoire de Louis XII, 2<sup>ème</sup> partie</i> (1893).
de Martens-Geffken	<i>Le Guide Diplomatique</i> (1866).
Flassan	<i>Histoire de la diplomatie française</i> (2nd ed., 1811).
García de la Vega	<i>Guide Pratique des Agents Politiques, etc.</i> (1873).
Hall	<i>A Treatise on International Law.</i> 8th ed., 1924. Pearce-Higgins.
Holtzendorff	<i>Handbuch des Völkerrechts</i> (1885-89).
Jenkinson	<i>A Collection of all the Treaties, etc., between Great Britain and other Powers</i> (1785).
K.B.	King's Bench.
Krauske	<i>Entwicklung der ständigen Diplomatie</i> (1885).
L.R.	<i>Law Reports.</i>
Moore	<i>Digest of International Law</i> (1906).
Oppenheim	<i>International Law</i> , 4th ed. McNair. 2 vols.—i. Peace (1928) ; ii. Disputes, War and Neutrality (1926).

Phillimore	.	.	<i>Commentaries on International Law</i> (1879-89).
Pradier Fodéré	.	.	<i>Cours de Droit Diplomatique</i> (1881).
P.R.O.	.	.	Public Record Office.
Q.B.	.	.	Queen's Bench.
Schmelzing	.	.	<i>Systematischer Grundriss des Völkerrechts</i> (1818-1820).
<i>T.L.R.</i>	.	.	<i>Times Law Reports</i> .
Treaty Series	.	.	<i>British Treaty Series of Parliamentary Papers</i> .
Ullmann	.	.	<i>Völkerrecht</i> (1908).
Villa Urrutia	.	.	<i>Relaciones entre España é Inglaterra durante la Guerra de la Independencia</i> (1911-14).

# A GUIDE TO DIPLOMATIC PRACTICE

## BOOK I DIPLOMACY IN GENERAL

### CHAPTER I DIPLOMACY

§ 1. DIPLOMACY is the application of intelligence and tact to the conduct of official relations between the governments of independent states, extending sometimes also to their relations with vassal states.

Other definitions are :

“La diplomatie est l'expression par laquelle on désigne depuis un certain nombre d'années, la science des rapports extérieurs laquelle a pour base les *diplômes* ou actes écrits émanés des souverains” (Flassan). “La science des relations extérieures ou affaires étrangères des États, et, dans un sens plus déterminé, la science ou l'art des négociations” (Ch. de Martens). “La science des rapports et des intérêts respectifs des États ou l'art de concilier les intérêts des peuples entre eux ; et dans un sens plus déterminé, la science ou l'art des négociations ; elle a pour étymologie le mot grec *δίπλωμα*, duplicata, double ou copie d'un acte émané du prince, et dont la minute est restée” (Garden).

“Elle embrasse le système entier des intérêts qui naissent des rapports établis entre les nations : elle a pour objet leur sûreté, leur tranquillité, leur dignité respectives ; et son but direct, immédiat, est, ou doit être au moins, le maintien de la paix et de la bonne harmonie entre les puissances” (same author).

“L'ensemble des connaissances et des principes qui sont nécessaires pour bien conduire les affaires publiques entre les États” (de Cussy, *Dictionnaire du Diplomate et du Consul*).

“La science des relations qui existent entre les divers États,

telles qu'elles résultent de leurs intérêts réciproques, des principes du droit international et des stipulations des traités" (Calvo).

"L'art des négociations. Klüber développe assez bien cette définition en disant que c'est 'l'ensemble des connaissances et principes nécessaires pour bien conduire les affaires publiques entre les États.' La diplomatie éveille en effet l'idée de gestion des affaires internationales, de maniement des rapports extérieurs, d'administration des intérêts nationaux des peuples et de leurs gouvernements, dans leur contact mutuel, soit paisible soit hostile. On pourrait presque dire que c'est 'le droit des gens appliqué'" (Pradier-Fodéré).

"Die Kenntniss der zur äusseren Leitung der öffentlichen Angelegenheiten und Geschäfte der Völker oder Souveraine, und der zu mündlichen oder schriftlichen Verhandlungen mit fremden Staaten gehörigen Grundsätze, Maximen, Fertigkeiten und Formen" (Schmelzing, *Systematischer Grundriss des Völkerrechts*).

According to Rivier, the use of "diplomacy" is three-fold :

1st. La science et l'art de la représentation des États et des négociations.

2nd. On emploie le même mot . . . pour exprimer une notion complexe, comprenant soit l'ensemble de la représentation d'un État, y compris le ministère des affaires étrangères, soit l'ensemble des agents politiques. C'est dans ce sens que l'on parle du mérite de la diplomatie française à certaines époques, de la diplomatie russe, autrichienne.

3rd. Enfin on entend encore par diplomatie la carrière ou profession de diplomate. On se voue à la diplomatie, comme on se voue à la magistrature, au barreau, à l'enseignement, aux armes (*Principes du droit des gens*).

§ 2. The diplomat, says Littré, is so called, because diplomas are official documents (*actes*) emanating from princes, and the word diploma comes from the Greek δῖπλωμα (*διπλόω*, I double) from the way in which they were folded. A diploma is understood to be a document by which a privilege is conferred : a state paper, official document, a charter. The earliest English instance of the use of this word is of the year 1645.

Leibniz, in 1693, published his *Codex Juris Gentium Diplomaticus*, Dumont in 1726 the *Corps universel Diplomatique du Droit des Gens*. Both were collections of treaties and other official documents. In these titles *diplomaticus*, *diplomatique*, are applied to a body or collection of original state-papers, but as the subject-matter of these particular collections was *international* relations, "corps diplomatique" appears to have been treated as equivalent to "corps du droit des gens," and "diplomatique" as "having to do with international relations." Hence the application also to the officials connected with such

matters. *Diplomatic body*<sup>1</sup> now came to signify the body of ambassadors, envoys and officials attached to the foreign missions residing at any seat of government, and *diplomatic service* that branch of the public service which supplies the *personnel* of the permanent missions in foreign countries. The earliest example of this use in England appears to be in the "Annual Register" for 1787. Burke, in 1796, speaks of the "diplomatic body," and also uses "diplomacy" to mean skill or address in the conduct of international intercourse and negotiations. The terms *diplomat*, *diplomate*, *diplomatist* were adopted to designate a member of this body.<sup>2</sup> In the eighteenth century they were scarcely known. Disraeli is quoted as using "diplomatic" in 1826 as "displaying address" in negotiations or intercourse of any kind (New English Dictionary). *La diplomatique* is used in French for the art of deciphering ancient documents, such as charters and so forth.

§ 3. The words, then, are comparatively modern, but diplomatists existed long before the words were employed to denote the class. Machiavelli (1469-1527) is perhaps the most celebrated of men who discharged diplomatic functions in early days. D'Ossat (1536-1604), Kaunitz (1710-1794), Metternich (1773-1859), Pozzo di Borgo (1764-1842), the first Lord Malmesbury (1764-1820), Talleyrand (1754-1838), Lord Stratford de Redcliffe (1786-1880) are among the most eminent of the profession in more recent times. If men who combined fame as statesmen with diplomatic reputation are to be included, Count Cavour (1810-1861) and Prince Bismarck (1815-1898) enjoyed a world-wide celebrity.

§ 4. "Diplomatist" ought, however, to be understood as including all the public servants employed in diplomatic affairs, whether serving at home in the department of foreign affairs, or abroad at embassies or other diplomatic agencies. Strictly speaking, the head of the foreign department is also a diplomatist, as regards his function of responsible statesman conducting the relations of his country with other states. This he does by discussion with their official representatives or by issuing instructions to his agents in foreign countries. Sometimes he is a diplomatist by training and profession; at others he may be a political personage, often possessed of special knowledge fitting him for the post.

§ 5. When we speak of the "diplomacy" of a country as

<sup>1</sup> This use of the expression first arose in Vienna about the middle of the eighteenth century (Ranke, cited by Holtzendorff, iii. 617).

<sup>2</sup> Callières, whose book was published in 1716, never uses the word *diplomate*. He always speaks of "un bon" or "un habile négociateur."

skilful or blundering, we do not mean the management of its international affairs by its agents residing abroad, but their direction by the statesman at the head of the department. Many writers and speakers are disposed to put the blame for a weak or unintelligent diplomacy on the agent, but this mistake arises from their ignorance of the organisation of public business. The real responsibility necessarily rests with the government concerned.

## CHAPTER II

### IMMUNITIES OF THE HEAD OF A FOREIGN STATE

§ 6. A SOVEREIGN within the territory of a foreign state, so long as he is there in his capacity of sovereign, is entitled to all ceremonial honours befitting his position and dignity. He is exempt from the civil and criminal jurisdiction of the local tribunals, from all taxation, police regulations ; his place of residence may not be entered by the state authorities without his permission.<sup>1</sup> The movables he carries with him are ordinarily exempt from customs duties and visitation by customs officers ; this privilege is also extended by general comity to goods destined for delivery to a foreign sovereign or his family in their transit through foreign countries.<sup>2</sup> The members of his suite enjoy the same immunities as himself. If he commits acts against public order or security, he can only be expelled, the necessary precautions being taken to prevent a repetition of such acts. On the other hand, he cannot exercise jurisdiction over persons belonging to his suite ; if one of them should commit an offence, he must be sent home in order that the case may be dealt with by the tribunals of his own country, and similarly with respect to civil matters. The foreign sovereign cannot protect a delinquent, not a member of his suite, who takes refuge with him, but must surrender him on demand. He must not ignore administrative regulations made for the preservation of the public peace and public health. He must, of course, take care that they are equally observed by the persons in his suite.

§ 7. If, however, a sovereign travels incognito in the territories of a foreign state, he can only claim to be treated as a private individual ; but if he declares his identity, then he becomes entitled to all the immunities pertaining to his rank as sovereign. The same rule would hold good if he entered the service of another sovereign ; he could only recover his rights by resigning the service in which he was engaged.

§ 8. The case of the Duke of Cumberland, who was a peer

<sup>1</sup> Hall, 220 ; Ullmann, 158.

<sup>2</sup> Phillimore, ii. 139.

of the realm in Great Britain, and King of Hanover, was peculiar.<sup>1</sup> It is conceived that if he had come to England as Duke, he could only have become entitled to be treated as a sovereign in England by returning to Hanover and coming again in his capacity of King.

§ 9. A regent governing in place of a sovereign during the infancy or incapacity of the sovereign, is as the incumbent entitled to all the privileges due to the latter, even if not a member of the reigning family.<sup>2</sup>

§ 10. Writers differ as to the position of the president of a republic when in the territory of another state. While some see no reason for drawing any distinction between a sovereign and a president who is the elected head of a state, others hold an opposite view :

“ L’extritorialité ne s’applique pas au président d’une république. De prime abord il est clair que lorsqu’un souverain, aussi bien qu’un président, séjournent à l’étranger pour y exercer des fonctions diplomatiques, les privilèges de l’extritorialité prennent existence en vertu de leur caractère diplomatique. Le droit des gens accorde cependant, en dehors de cela, au souverain, l’extritorialité en vertu de la position qu’il occupe, comme chef suprême de l’État. Pareille position ne peut être attribuée à un président ; il n’est pas souverain, mais seulement chef du pouvoir exécutif et simple fonctionnaire, employé de l’État qu’il préside. Dans ce cas l’extritorialité n’a aucune justification et n’a pas à être appliquée.”<sup>3</sup>

§ 11. But, however this may be, it cannot be doubted that no head of a republic would expose himself to any risk of being refused the immunities accorded to a sovereign, and that on the rare occasion when a president visits a foreign state he would expect to receive, or has been assured beforehand, treatment in all respect the same as that of a sovereign. All such ceremonious honours as those accorded to a sovereign appear to have been accorded on the occasion of the visit of the President of the French Republic to Russia in 1914, on the visit of the President of the United States to England in 1918, and on the visit of the President of the French Republic to England in 1927.

§ 12. If a sovereign privately owns real property in a foreign state, it is subject to the jurisdiction of the local tribunals. Hall holds,<sup>4</sup> with justice in our opinion, that this applies also

<sup>1</sup> See *Duke of Brunswick v. King of Hanover* (1844), 6 Beav. 1 ; 2 H.L.C. 1.

<sup>2</sup> Oppenheim, i. § 352.

<sup>3</sup> Heyking, *L’Extritorialité*, Cours de La Haye (1925), ii. 283.

<sup>4</sup> Hall, 222.

to personalty, not coming within the categories previously mentioned, owned in a foreign state. This seems also to be Ullmann's<sup>1</sup> view. Execution of a judgment in respect of contract or tort might in practice encounter difficulties. The practice of the English courts, both of equity and common law, has been in favour of the privileged exemption of sovereigns in all matters of contract. And the French courts have upheld the same principle.<sup>2</sup>

§ 13. If he appeals in a civil matter to the courts of a foreign state, he must submit to cross-proceedings being taken against him<sup>3</sup> as the condition on which his action is entertained by the court. In England he must comply with the rules of the court, for a sovereign bringing an action in the courts of a foreign country brings with him no privilege which can vary the practice or displace the law applying to other suitors in those courts.<sup>4</sup>

§ 14. A sovereign who has been deposed by his people, or who has abdicated, and whose deposition or abdication has been recognised by other states, and a president of a republic whose term of office has expired, or who has been overthrown by a revolution, enjoy no immunities. Any privileges accorded to such personages during their residence in other countries must depend on the course which the authorities of those countries deem it expedient to adopt.<sup>5</sup>

§ 15. *Ceremonial of the Visit of the President of the French Republic to England, May 16, 1927.*

On May 16, 1927, the President and Suite left Calais in the s.s. *Invicta* at 11.30 A.M. The vessel was met half-way across the Channel and escorted into Dover by a Naval Escort of four British destroyers, and an Air Escort of five fighter aeroplanes. As she approached Dover salutes were fired by the shore batteries.

On arrival at Dover the Prince of Wales went on board to welcome the President on behalf of the King. His Royal Highness was accompanied by the French Ambassador, and presented the British Suite specially attached to the President for the period of the State visit.

In attendance on the President :—Field Marshal Earl Haig ; Lord Colebrook, Lord-in-Waiting to the King ; Major Reginald Seymour, Equerry to the King.

The following were the names of the French Suite in attendance :—Monsieur Jules Michel, Secrétaire Général Civil de la

<sup>1</sup> Ullmann, 159 and footnote.

<sup>2</sup> Phillimore, ii. 144 ; Oppenheim, i. § 115.

<sup>4</sup> Phillimore, ii. 151.

<sup>3</sup> See on this point § 348.

<sup>5</sup> *Ibid.*, ii. 149.

Présidence de la République ; Monsieur P. de Fouquières, Ministre Plénipotentiaire, Directeur du Protocole ; Monsieur le Contre-Amiral Vedel, Attaché à la personne du Président de la République ; Monsieur le Lieutenant-Colonel de Boyve, Attaché à la personne du Président de la République ; Monsieur le Lieutenant-Colonel Philippe, Attaché à la personne du Président de la République ; Monsieur Barbier, Administrateur de l'Agence Havas ; Monsieur Dubois, Officier d'Administration de 1<sup>ère</sup> Classe, Chef du Secrétariat Militaire.

Monsieur A. Briand, Président du Conseil, Ministre des Affaires Étrangères, and Monsieur Léger, Ministre Plénipotentiaire, Chef du Cabinet, also accompanied the President.

At 1 P.M. the President was conducted on shore by the Prince of Wales, and was received by the Lord Warden of the Cinque Ports, His Majesty's Lieutenant for the County of Kent, the Commander-in-Chief The Nore, the General Officer Commanding-in-Chief Eastern Command, and the Air Officer Commanding Coastal Area.

Guards of Honour of the Royal Navy and of the First Battalion, Lancashire Fusiliers, were mounted on the Pier.

An address was presented to the President by the Mayor and Corporation of Dover, on the Station Platform.

A special train left Dover Marine Station at 1.15 P.M. to convey the President to London.

The President of the French Republic, accompanied by the Prince of Wales, arrived at Victoria Station at 3 P.M., where they were met by the King and Members of the Royal Family.

There were also present at the station the Prime Minister, the Secretary of State for Foreign Affairs, the Secretary of State for the Home Department, H.M. Vice-Lieutenant for the County of London, the Lord Mayor and Sheriffs, the First Sea Lord of the Admiralty, the Chief of the Imperial General Staff, the Chief of the Air Staff, the Chairman of the London County Council, and the Mayor of the City of Westminster.

Levée dress was worn.

A Guard of Honour of the 3rd Battalion Grenadier Guards was mounted at the station.

The President was conducted to his carriage by the Earl of Granard, Master of the Horse, and then proceeded in carriage procession, accompanied by the King and Prince of Wales, and escorted by a Sovereign's Escort of the Household Cavalry with Standard, to Buckingham Palace. The Procession left Victoria Station at 3.10 P.M., and arrived at Buckingham Palace at 3.25 P.M.

#### *First Carriage.*

The President of the French Republic.

The King.

H.R.H. the Prince of Wales.

H.R.H. Prince Henry.

*Second Carriage.*

Monsieur A. Briand.  
The French Ambassador.  
Monsieur Jules Michel.  
The Master of the Horse.

*Third Carriage.*

Monsieur de Fouquières.  
Monsieur le Contre-Amiral Vedel.  
Monsieur Léger.  
Field-Marshal Earl Haig.

*Fourth Carriage.*

Monsieur le Lieut.-Colonel de Boyve.  
Monsieur le Lieut.-Colonel Philippe.  
Monsieur Barbier.  
Lord Colebrooke.

*Fifth Carriage.*

Monsieur Dubois.  
Captain Sir C. Cust, Bart., R.N.  
Major Reginald Seymour.  
Capt. Hon. Alexander Hardinge.

The streets were lined with troops.

The King's Guard, with the King's Colour and Band, were mounted in the Quadrangle of the Palace.

The Lord Chamberlain, the Lord Steward, the Captain of the Gentlemen-at-Arms, the Captain of the Yeomen of the Guard, the Treasurer to the King and the Keeper of the Privy Purse, the Private Secretary to the King, the Master of the Household, the Comptroller of the Lord Chamberlain's Office, the Crown Equerry, the Deputy Treasurer to the King, the Marshal of the Diplomatic Corps, and the Gentlemen of the Household-in-Waiting were in attendance in the Grand Hall.

The Queen received the President of the French Republic in the Bow Room. The Mistress of the Robes, the Ladies-in-Waiting, the Lord Chamberlain to the Queen, the Treasurer to the Queen, and the Private Secretary to the Queen were in attendance.

The Suite of the President of the French Republic were received by the King and Queen in the Bow Room.

Guards of the King's Bodyguard of the Honourable Corps of Gentlemen-at-Arms and His Majesty's Bodyguard of the Yeomen of the Guard were on duty in the Grand Hall. The King's Indian Orderly Officers were also on duty.

Levée dress was worn.

At 4.30 P.M. the President and Suite left Buckingham Palace in motor-cars to visit the Cenotaph and the Grave of the Unknown Warrior in Westminster Abbey, being received at the Cenotaph

by the Second Sea Lord of the Admiralty, the Adjutant-General to the Forces, and a Service Member of the Air Council ; and at Westminster Abbey by the Very Reverend the Dean.

Afterwards the President visited members of the Royal Family.

At 5.45 P.M. the President arrived at St. James's Palace, where he received the personnel of the French Embassy, Addresses from the London County Council and the City of Westminster, and held a reception of the French Chamber of Commerce and the French community.

Morning dress was worn.

In the evening the King and Queen gave a State Banquet at Buckingham Palace in honour of the President at 8.10 P.M.

A Guard of the King's Bodyguard of the Yeomen of the Guard were on duty.

Full dress was worn.

On May 17, the President and Suite visited Oxford University, where he received the Degree of Doctor of Civil Law, thereafter returning to Buckingham Palace. Morning dress was worn. In the evening the President entertained the King and Queen to dinner at the French Embassy. Evening dress (Decorations, Star and Riband) was worn.

On May 18, the President visited the French Hospital, afterwards receiving the Chefs de Mission of the Corps Diplomatique in the Bow Room, Buckingham Palace. Morning dress was worn by the Corps Diplomatique. In the afternoon he visited the Guildhall, where an Address was presented by the Lord Mayor and the Corporation of the City of London, and was entertained at luncheon by the Corporation of the City of London. Levée dress was worn. Later the President visited l'Institut Français du Royaume-Uni. In the evening the President was entertained to dinner at the Foreign Office by the Secretary of State for Foreign Affairs. Levée dress was worn.

On May 19, the State Visit of the President of the French Republic concluded.

§ 16. *Ceremonial of the Vatican on the reception of a Sovereign, as observed on the visit of the King and Queen of the Belgians, the Duke and Duchess of Brabant, the Count of Flanders, and Princess Marie José, January 7, 1930.*

*General Dispositions.*—The Ceremony is directed by the Monsignor Secretary of Ceremonial. The Italian Government undertakes to keep the Piazza of St. Peter's and the Colonnade entirely clear of the public from at least two hours before the arrival of the Royal Procession until Their Majesties shall have left the City of the Vatican. The police service along the route within the Vatican City, including the Piazza of St. Peter's, is entrusted to the Commandant of the Pontifical Gendarmerie, who will be careful to see that all windows and doors opening on the line of route are kept closed. The Museums, Galleries and Offices of the Vatican City

and the Basilica of St. Peter's are all closed. All Military Guards are posted two hours before the arrival of the Royal Procession and are withdrawn only when Their Majesties have left the Vatican City. Admission to, and circulation within, the line of route are prohibited to all strangers. Those who, for official reasons, have need to enter the Vatican City are furnished with a special card issued by the Governor of the Vatican City. The Military are under the orders of the Governor of the Vatican City and of Monsignor the Master of the Household. All persons on duty in the Ante-Chamber do not leave the Pontifical Apartments until they receive orders from the Master of the Household. The Privy Chamberlains of Sword and Cape on duty are increased in accordance with the exigencies of the service. The Dignitaries of the Pontifical Court on duty wear full dress.

The Commandant of the Noble Guard is warned for duty in the Secret Ante-Chamber, and at the appropriate moment, in company with the Master of the Household proceeds to the Porch of the Papal Stairs, accompanied by an officer of his Staff to await the arrival of the Sovereigns. At the same time another officer of the Noble Guard proceeds with the Privy Almoner to the Sala Clementina. Two Cadets and eighteen Guards are on duty in the usual apartment. Sixteen Guards are formed up in a double rank and the remaining two on sentry duty, one at the threshold of their apartment, the other at the door of the Secret Ante-Chamber. Twenty Guards are paraded in the Sala Ducale, on the window side. Full dress uniform.

A double Picket of Swiss Guards posted at the edge of the Piazza of St. Peter's renders due honours to the Sovereigns while the Band of the Corps plays the Belgian National Anthem. Pickets are posted on the line of route and at the Porch of the Papal Stairs. An escort is in waiting consisting of one Sergeant, one Corporal, and seven Guardsmen. A detachment is paraded in the Sala Clementina, under the command of an officer, to render the usual honours. Two officers are in the Sala degli Arazzi, the Lieutenant-Colonel in the Throne Room and the Colonel Commandant in the Secret Ante-Chamber. The latter, at the appropriate moment, accompanies the Master of the Household and the Commandant of the Noble Guard to the Porch of the Papal Stairs to await the arrival of the Sovereigns. Guards are posted in the Chapel of the Blessed Sacrament and along the Altar of the Confession. Full dress uniform.

A Company of the Palatine Guard is paraded on the edge of the Piazza of St. Peter's, under the command of a Captain, and detachments are posted along the line of route. The Band of the Corps and the Guard of Honour are in the Cortile di S. Damaso. Ten officers line the route between the entrance to the Cortile of the Holy Office and the Papal Stairs. On the arrival of the Sovereigns in the Cortile di S. Damaso, the Band plays the Belgian National Anthem, while the Guard of Honour renders the customary salute. Various detachments are posted in the Papal

Apartments, the Colonel Commandant in the Throne Room. There is also a guard in the Portico of the Basilica of St. Peter's and the Guard of Honour with the Band subsequently proceeds to the steps outside the Basilica to render honours on the departure of the Sovereigns. Full dress uniform.

A platoon of the Pontifical Gendarmerie is posted at the entrance to the Vatican City and Guards line the route on police service. In the Cortile Borgia two Trumpeters announce the arrival of the Sovereigns. In the Cortile di S. Damaso there is a Guard of Honour with the Band. Two Guards with drawn swords are posted at all the entries into the Cortile di S. Damaso. In the Papal Apartments a Picket is posted to render the due honours to the Sovereigns. The Major Commandant of the Corps is in the Throne Room and two Gendarmes are on duty in the Apartments of the Secretary of State. Full dress uniform.

*The Visit to His Holiness.*—The Royal Procession enters the Piazza of St. Peter's from the Piazza Rusticucci and halts on coming to the border. Awaiting them are the Governor of the Vatican City with his Staff, the Counsellor General of the Vatican City and the Postmaster-General. The Guards of Honour of the Swiss Guard and of the Palatine Guard give a Royal Salute and the Band of the Swiss Guard plays the Belgian National Anthem. The Governor approaches the Royal Carriage and presents to Their Majesties the Counsellor General and the Postmaster-General, who in their own carriages join the Procession, which proceeds to the Cortile di San Damaso where the Band of the Palatine Guard plays the National Anthem and the Royal Salute is given. On the first landing of the Papal Stairs the Master of the Household, the Grand Master of the Sacred Hospice, the Secretary of Ceremonial, the Quarter-Master of the Sacred Apostolic Palace, the Master of the Horse, the Commandants of the Noble Guard and of the Swiss Guard and four Privy Chamberlains await Their Majesties. Six Parafrenieri, the Picket of the Swiss Guard, and six Ushers are in readiness to form the Procession. The Grand Master of the Sacred Hospice descends into the Cortile and opens the door of the carriage for Their Majesties to alight. The Secretary of the Ceremonial presents to the Sovereigns the Grand Master of the Sacred Hospice, who in his turn presents the Master of the Household. The Secretary of the Ceremonial receives the other Royalties and presents the Master of the Household. In the meantime the Suite alight from their carriages and take up position in the Procession which ascends the Papal Stairs in the following order :

A Sergeant of the Swiss Guard ; six Parafrenieri followed by the Dean of the Papal Apartments ; six Ushers ; Their Majesties, with the Master of the Household on their right, and on their left the Grand Master of the Sacred Hospice, who offers his arm to her Majesty the Queen ; the Princes and the Princesses and the Royal Suite accompanied by Pontifical Dignitaries ; the Escort of the Swiss Guard flanks and closes the procession.

In the Sala Clementina Their Majesties are awaited by the

Almoner to His Holiness, the Sacrist, two Monsignori Chamberlains Partecipanti, a Pontifical Master of the Ceremonies, a Monsignor Privy Chamberlain Supernumerary, an Officer of the Staff of the Noble Guard and two Consistorial Advocates. The Master of the Household presents to the Sovereigns and to Their Royal Highnesses the Privy Almoner. The Procession crosses the Sala Clementina, and the Swiss Guards fall out and line the entrance to the Sala dei Parafrenieri awaiting the return of the Royal Procession. Similarly in the next room the Parafrenieri fall out. Likewise the Suite of the Grand Master of the Sacred Hospice, and also in the Sala degli Arazzi the six Ushers. The Procession then enters the Throne Room, where the Commandant of the Palatine Guard, the Lieutenant-Colonel of the Swiss Guard and the Commandant of the Pontifical Gendarmerie, one clerical and one lay Privy Chamberlain with three others are waiting. At the entrance to the Throne Room the Privy Chamberlains and the Consistorial Advocates fall out from the Procession to await the return of the Sovereigns. Their Majesties then enter the Hall of St. John, where the Grand Master of the Sacred Hospice, the Privy Almoner and the Secretary of Ceremonial together with the Royal Suite fall out, while the Master of the Household introduces the Sovereigns and Their Royal Highnesses to the Holy Father in the Little Throne Room.

His Holiness, in rochet and mozzetta, on notification from the Chamberlain on duty, proceeds to meet Their Majesties and Their Royal Highnesses in the doorway of the Little Throne Room. The Holy Father seats himself on the Chair under the Canopy and invites his guests to be seated. The Master of the Household, after offering chairs to Their Majesties and to Their Royal Highnesses, withdraws. The visit over, Their Majesties present to His Holiness their Suite, who are introduced by the Master of the Household. Then His Holiness accompanies them to the door of the Little Throne Room and takes his leave. The Sovereigns and Their Royal Highnesses, accompanied by the Master of the Household, pass into the Secret Ante-Chamber, where its members are presented in order of precedence. The Procession is then re-formed in the same order as before. During the passage through the various Apartments the Master of the Household presents the various Dignitaries on duty. At the exit from the Sala Clementina the Privy Almoner, the Sacrist, the two Clerical Privy Chamberlains, the Master of the Ceremonies, the Staff Officer of the Noble Guard, and the two Consistorial Advocates take leave of Their Majesties.

*Visit to the Cardinal Secretary of State.*—The Procession descends to the first floor, to the Apartments of the Cardinal Secretary of State. In the Hall of the Congregations there are awaiting them the three Prelates, Heads of Departments in the Secretariat of State, *i.e.* the Under-Secretary and Assistant Under-Secretary of State and the Chancellor of Apostolic Briefs. In the entrance Hall, two Prelates, a Pontifical Master of the Ceremonies, the Cardinal's Gentleman-in-Waiting, his Master of the Household, and Train

Bearer, await Their Majesties. The Cardinal Secretary of State moves to meet Their Majesties half-way along the Corner Room. The Master of the Household of His Holiness presents His Eminence to the Sovereigns and to Their Royal Highnesses. The Cardinal accompanies Their Majesties and Their Royal Highnesses into the Throne Room, where he invites them to be seated. The Master of the Ceremonies, after offering them chairs, retires and the remainder of the Party wait in the Hall of the Congregations. The conversation over, the Cardinal accompanies the Sovereigns into the Hall of the Congregations, where reciprocal presentations are made. Then the Cardinal accompanies Their Majesties to the Corner Room and takes his leave. During the visit the participants in the Procession, other than those in the Hall of the Congregations, are posted in the various Rooms of the Cardinal's Apartments and, on the return of the Sovereigns, resume their proper places in the Procession, which then by the Sala Giulia, the Sala Ducale and the Sala Regia, descends the Scala Regia to the Statue of Constantine and enters the Basilica of St. Peter by the Main Door.

*Visit to the Basilica of St. Peter.*—To the right of the main entrance, the Cardinal Arch-Priest, in cappa magna, accompanied by his Court, the Econome of St. Peter's and a Commission of six Canons in Choir Dress await Their Majesties. In front of His Eminence are also placed the Clerics of the Vatican in Choir Dress. The Master of the Household presents the Cardinal Arch-Priest to the Sovereigns and to Their Royal Highnesses, who in turn presents to Their Majesties the Econome of the Basilica, the six Canons, the Chapter and the Clergy of the Basilica "en masse." The Cardinal Arch-Priest then offers to Their Majesties and to Their Royal Highnesses the Holy Water, with which they make the Sign of the Cross. Their Majesties, accompanied by the Cardinal Arch-Priest and by the Master of the Household of His Holiness and followed by Their Royal Highnesses, the Econome, the Commission of Canons, and the Dignitaries forming part of the Procession, proceed by the Central Nave to the Chapel of the Blessed Sacrament. There they say a prayer on the prie-dieu placed at their disposal while the Suite and the Pontifical Dignitaries kneel at special places prepared for them. Then Their Majesties proceed to the Altar of the Confession to pray at the Tomb of St. Peter. The visit over, the Royal Procession proceeding down the Central Nave leaves by the Main Door, where the Cardinal Arch-Priest, the Econome and the Commission of Canons take their leave.

During the visit of Their Majesties and Their Royal Highnesses the rest of the Vatican Clergy remain in their places to render honour to the Sovereigns on their departure from the Basilica. The Sovereigns and Their Royal Highnesses depart by the Piazza of St. Peter's. At the foot of the steps the Master of the Household, the Grand Master of the Sacred Hospice, the Secretary of the Ceremonial and the other Dignitaries of the Pontifical Court take their leave. Their Majesties enter their carriage, the Grand Master of the Sacred Hospice closing the door. Their Royal Highnesses

and the Suite then enter their carriages and the Procession departs in the original order. The Guard of Honour of the Palatine Guard drawn up on the steps presents arms, while the Band plays the Pontifical Hymn.

*Return Visit.*—As soon as Their Majesties have returned to their Apartments in the Quirinal Palace, the Cardinal Secretary of State together with his Noble Court proceeds thither to return the visit.

*Non-Catholic Sovereigns, Heads of States and Other Royal Personages.*—The ceremonial for the reception of non-Catholic Sovereigns, Heads of States and Royal Personages of lesser grades, is arranged generally on the above lines, with the modifications adapted to meet each individual case.

## CHAPTER III

### THE MINISTER FOR FOREIGN AFFAIRS

§ 17. THE minister for foreign affairs is the regular intermediary between the state and foreign countries. His functions are regulated by domestic legislation and traditions, and his powers vary according to the political organisations of different states.

Foreign governments address themselves to the minister for foreign affairs either through their own diplomatic agent abroad, or through the diplomatic agent who represents his sovereign or government at their own capital. As a general rule notes and other communications concerning relations with other countries are signed by him, or on his behalf. Under his orders are drawn up documents connected with foreign relations, drafts of treaties and conventions, statements of fact and law, manifestos and declarations. The negotiation of treaties rests with him and he watches over their execution. Ratifications of treaties are exchanged by him or his agents. He proposes to the head of the state the nomination of diplomatic agents, he draws up their credentials and full powers for signature by the head of the state, and gives them their instructions. He advises the head of the state as to the acceptance of persons who have been proposed to be accredited to him, and also as regards the issue of *exequaturs* to foreign consular officers. The consular service receives its orders from him. Foreign representatives address themselves to him in order to obtain an audience of the head of the state.

§ 18. On taking office the minister for foreign affairs informs the diplomatic representatives of foreign states, and customarily receives them as soon as possible thereafter at his official residence to exchange greetings with them. He also informs the diplomatic agents of his own country accredited abroad.

§ 19. In Great Britain it is usual for the retiring Secretary of State for Foreign Affairs to address to the foreign diplomatic representatives an announcement in some such terms as

I have the honour to inform you that the King has been graciously pleased to accept my resignation of the office of His Majesty's Principal Secretary of State for Foreign Affairs, and to confide the seals of this Department to —.

His successor, on assuming office, addresses a notification to the foreign diplomatic representatives in such terms as

I have the honour to acquaint you that the King has been graciously pleased to accept the Right Honourable —'s resignation of the office of His Majesty's Principal Secretary of State for Foreign Affairs, and to confide to me the seals of this Department.

Arrangements are then made for the reception by the incoming Secretary of State of the heads of missions in the order of their precedence in the diplomatic list.

§ 20. In all communications with the government of the state to which they are accredited, diplomatic agents should address themselves to the minister for foreign affairs, whether in seeking information as to the views or practice of that government in regard to various matters that may arise, or in furnishing information as to the views or practice of their own government.

The Pan-American Convention respecting diplomatic officers, signed at Havana on February 20, 1928, lays down for the signatory States the following rules :

“Article 13. Diplomatic officers shall, in their official communications, address themselves to the Minister of Foreign Relations or Secretary of State of the country to which they are accredited. Communications to other authorities shall also be made through the said Minister or Secretary.”

§ 21. Of this high office, Baron de Martens said :

“A l'égard des relations extérieures . . . il faut demander, solliciter, négocier ; le moindre mot inconsideré peut blesser toute une nation ; une fausse démarche, un faux calcul, une combinaison fausse ou hasardée, une simple indiscretion, peuvent compromettre et la dignité du gouvernement et l'intérêt national. La politique extérieure d'un Etat présente des rapports si variés, si compliqués, si sujets à changer, et à la fois environnés de tant d'écueils et de difficultés, qu'on concevra facilement combien doivent être difficiles et délicates les fonctions de celui qui est appelé à la direction d'une telle administration. . . . On est tellement habitué à juger d'après le caractère, les principes et les qualités personnelles du ministre des relations extérieures, le système de sa politique, que sa nomination ou son renvoi sont toujours considérés comme des événements politiques. . . .

“ Il doit avoir une connaissance exacte des intérêts commerciaux qui rapprochent les États, des ressources matérielles de tout genre qui font leur force, des traités et conventions qui les lient, des principes et des vues qui gouvernent leur politique, des hommes d’État qui la dirigent, des entourages de cour qui l’altèrent, des alliances entre les familles souveraines qui l’influencent, des rivalités de puissances qui en compliquent l’action ; dépositaire en quelque sorte de l’honneur et des intérêts généraux de son pays, dans ses rapports extérieurs, il doit s’appliquer à bien connaître les hommes, afin de ne faire que des choix convenables dans le personnel de ses agents au dehors, et de ne remettre qu’à des mains capables et dignes la sauvegarde de ces intérêts si graves et de cet honneur si ombrageux. L’expérience acquise, les services antérieurement rendus, la notoriété du talent, la considération personnelle, sont des éléments essentiels de sa confiance.”<sup>1</sup>

At the present day the duties and responsibilities of the minister who is entrusted with the conduct of the foreign relations of his country range over a yet wider field than when the above was written. The birth of new states, the advancement of others, constitutional changes which may occur in their methods of government, the growth of organisations designed to foster a better understanding between the nations of the world, the ever-increasing complexity of international relationships, and the many questions to which all these give rise, have largely extended the area within which diplomacy finds its proper scope, and call for close and unremitting attention.

§ 22. In every country the Foreign Minister is assisted by a trained staff who, under his guidance, constitute the Foreign Office or Ministry for Foreign Affairs. In Great Britain the permanent staff of the Foreign Office has at its head the Permanent Under-Secretary of State, who has the rank of ambassador ; two Deputy Under-Secretaries of State and two Assistant Under-Secretaries of State, who have the rank of minister ; and the Parliamentary Under-Secretary of State, who holds office as a member of the government in power for the time being.

• § 23. In most countries the title of the minister who directs foreign relations is Minister for Foreign Affairs, in the language of the country concerned, or Minister of Foreign Relations. In Great Britain it is Secretary of State for Foreign Affairs ; in the United States it is Secretary of State, though the authority of the President predominates in foreign affairs as in all other matters. In the Union of Soviet Socialist Republics foreign

<sup>1</sup> de Martens-Geffken, i. 25.

relations are controlled by the People's Commissary for Foreign Affairs.

Occasionally the holder of the office combines this with other functions. In Great Britain within modern times the Secretary of State for Foreign Affairs has on two occasions also been Prime Minister. In France he is often President of the Council. In Germany, he might be also Chancellor; in Austria, also State Chancellor.

§ 24. In England the King's Secretary is first heard of in 1253, in the reign of Henry III. The office was at first a part of the royal household. Its holder might be a man of character and capacity, fit to be a member of the King's Council, or to be sent as an envoy to foreign powers. Such were the Secretaries of Henry III and Edward I. Or he might be an inferior officer of the household, and such seems to have been the position of the Secretary of Edward III. In 1433 (reign of Henry VI) two Secretaries were appointed, one by the delivery of the King's Signet, the other by patent. In 1476 (reign of Edward IV) a newly appointed Secretary is described as Principal Secretary. In the reign of Henry VIII the position of Principal Secretary was advanced. They were still members of the household, but ranked next to the greater household officers, and in Parliament and Council they had their place assigned by statute. In 1539 a warrant issued to Thomas Wriothesley and Ralph Sadler gave them "the name and office of the King's Majesty's Principal Secretaries during his Highness' pleasure." After Henry's reign the Secretary ceased to be a member of the household.

During the greater part of Elizabeth's reign there was but one Secretary, but at the close of it Sir Robert Cecil shared the duties with another, he being called "Our Principal Secretary of Estate," and the other "one of our Secretaries of Estate." From this time, until the year 1794, it was the rule that there should be two Secretaries of State; the exceptions occurred in 1616, when there were three—from 1707 until 1746, when there was usually a third Secretary for Scottish business—and from 1768 until 1782, when there was a third Secretary for Colonial business.

Down to 1782 the duties of the two Secretaries, as regards foreign affairs, were divided geographically into Northern and Southern Departments, and until that year they were described in official documents relating to the staff common to both as "His Majesty's Principal Secretaries of State for Foreign Affairs." The Northern Secretary used to announce himself

to resident heads of foreign missions thus : " Le Roi m'ayant fait l'honneur de me nommer aujourd'hui son Secrétaire d'État pour le département du Nord," but on March 27, 1782, Fox announced to them that " le Roi m'ayant fait l'honneur de me nommer son Secrétaire d'État pour le Département des affaires étrangères, etc." Since 1782, therefore, the Secretaryship of State for Foreign Affairs has always been entrusted to a single person. Sir William Anson says : " I cannot ascertain that any Order in Council or departmental minute authorises or records this important administrative change."<sup>1</sup>

§ 25. The mode of appointment of His Majesty's Secretary of State for Foreign Affairs is by the delivery to him by the sovereign of the seals of office. There are three seals, the signet, a lesser seal, and a small seal called the *cachet* ; all these are engraved with the Royal arms, but the signet alone has the supporters. In the Foreign Office, diplomatic and consular commissions signed by the sovereign pass under the signet ; the lesser seal is used for royal warrants (such as instruments authorising the affixing of the Great Seal to full powers and to ratifications of treaties) ; the *cachet* is used to seal the envelopes of letters containing communications of a personal character made by the King to foreign sovereigns.

Patents were issued from the fifteenth century onwards till 1852. From that time the practice was intermittent till 1868, but since the latter date patents have not been issued, nor in any case would they affect the powers of the Secretary of State, for these follow the seals.<sup>2</sup>

The Secretary of State for Foreign Affairs holds a general full power from the King, authorising him to negotiate and conclude, subject if necessary to His Majesty's ratification, any treaty in respect of Great Britain and Northern Ireland and all parts of the British Empire which are not separate members of the League of Nations.

§ 26. It was in the fifteenth and sixteenth centuries that most of the European monarchies established a special branch of the administration for foreign affairs. In the reign of Francis I of France there was a secret committee to which was committed the discussion of questions of foreign policy. In 1547, at the beginning of the reign of Henry II, the department of Secretaries of State was founded. There were four

<sup>1</sup> Anson, *Law and Custom of the Constitution* (3rd ed.), ii. pt. 1, 166.

<sup>2</sup> Anson, *op. cit.*, 168.

such secretaries who shared home and foreign affairs among them. In the reign of Charles IX the Foreign Office was divided into four departments: (1) Italy and Piedmont, (2) Denmark, Sweden and Poland, (3) the Emperor, Spain, Portugal, the Low Countries, England and Scotland, (4) Germany and Switzerland. In 1589 a single ministry for foreign affairs was formed, and all foreign correspondence was committed to a single Secretary of State. But previously to 1787 he shared the direction of home affairs with the departments of War, Marine and the Household. Thus, he had charge of Upper and Lower Guyenne, Normandy, Champagne and part of La Brie, the principality of Dombes and Berry. But on Montmorin succeeding to Vergennes as Secretary of State in that year, his functions were confined to foreign affairs.<sup>1</sup>

Charles V of Spain had a secret council of state which furnished advice to the Emperor through the minister charged with the foreign branch of the administration, while in Spain a somewhat complicated system was established.

Under the Tsar Ivan III of Russia a "chamber of embassies" was employed about international relations.

§ 27. In most countries special care has been devoted to the preservation of public documents. In England, from the fourteenth century, papers were deposited at the Tower of London. Queen Elizabeth, in 1578, created the State Paper Office for the documents belonging to the Secretary of State, which has developed into the existing Public Record Office.

During the seventeenth and eighteenth centuries the foreign, domestic, colonial and military records, generally described as State Papers, were preserved in a common repository, at first in Whitehall, and after 1833 in the new State Paper Office built in St. James's Park. During this period they were under the immediate charge of a Keeper of the State Papers and a separate staff; but in 1854 the establishment of the State Paper Office was amalgamated with that of the Public Record Office, and in 1862 the building was pulled down and its contents transferred to the Record Office.

The older Foreign Office records, that is those prior to 1760, were transferred to the Public Record Office in 1862, with the rest of the contents of the State Paper Office. Frequent transfers of the more modern papers have taken place since 1868, but at irregular intervals. The Foreign Office

<sup>1</sup> Masson, *Le Département des Affaires Étrangères pendant la Révolution*, 56.

records now in the Public Record Office extend up to 1909, and public access may be had up to 1885. Correspondence of later date than 1909 is retained by the Foreign Office, which also keeps the indexes and registers of letters received from 1781.

§ 28. In many other countries public documents are similarly centralised, and access thereto permitted up to certain dates, concerning which particulars can doubtless be obtained, where desired, by application to the proper department of the government concerned.

## CHAPTER IV

### PRECEDENCE AMONG STATES AND SIMILAR MATTERS

§ 29. THE Pope in early times claimed the right of fixing the order of precedence among the heads of states. The precedence of the Pope above all other potentates was assumed as a matter of course. Next in order came the Emperor<sup>1</sup>; then the King of the Romans, who was the heir-apparent of the latter (by election).

§ 30. The list of sovereigns frequently attributed to Pope Julius II in 1504 was never promulgated by him. But in that year Paris de Grassis of Bologna became one of the two masters of ceremony of the papal chapel. At the beginning of a diary kept by him occurs the list, which with some variations has been regarded as a regulation intended to settle disputed questions of precedence. It formed part of a passage relating the reception on May 12, 1504, of the *ambassade d'obédience* from the King of England, and is as follows :

#### Ordo Regum Christianorum.

Imperator Cæsar,  
 Rex Romanorum,  
 Rex Franciæ,  
 Rex Hispaniæ,  
 Rex Aragoniæ,  
 Rex Portugalliæ,  
 Rex Angliæ, cum tribus discors prædictis,  
 Rex Siciliæ, discors cum rege Portugalliæ,  
 Rex Scotiæ et Rex Ungariæ inter se discordes,  
 Rex Navarræ,

<sup>1</sup> "Emperor of Germany," though often found in historical works applied to the head of the Holy Roman Empire, and even "German Emperor," were probably only convenient corruptions of the proper title (Bryce, *Holy Roman Empire*, lib. edit., 1889, p. 305). From the eleventh to the sixteenth century, that was, until his coronation, *Romanorum rex semper Augustus*, and after the ceremony, *Romanorum Imperator semper Augustus*. In 1508 Maximilian obtained a bull from Julius II permitting him to call himself *Imperator electus*. This became till 1806 the strict legal designation, though the word "elect" was often omitted (*ibid.*, p. 432).

Rex Cipri,  
 Rex Bohemiæ,  
 Rex Poloniæ,  
 Rex Daniæ.

Ordo Ducum.

Dux Britanniaë,  
 Dux Burgundiæ,  
 Dux Bavariæ, comes Palatinus.  
 Dux Saxoniam,  
 Marchio Brandenburgensis,  
 Dux Austriaë,  
 Dux Sabaudiaë,  
 Dux Mediolani,  
 Dux Venetiarum,  
 Duces Bavariæ,  
 Duces Franciæ et Lotharingiæ,  
 Dux Borboniaë,  
 Dux Aurelianensis, Isti quatuor non præstant obedientiam Sedi Apostolicæ quia subditi imperatoris sunt,  
 Dux Januæ,  
 Dux Ferrariæ.<sup>1</sup>

§ 31. A bull of Leo X dated March, 1516, uses the following language :

“Christianissimus in Christo filius noster, Maximilianus, in imperatorem electus, Julii II prædecessoris nostri, nostro vero tempore, clarissimæ memoriæ, Ludovicus Francorum et ceteri reges Christiani. . . Laterensi concilio adhæserunt,”<sup>2</sup> which shows that the king of France enjoyed precedence over all other kings.

§ 32. The first place being conceded to the Pope, and the second, with universal assent, to the Emperor, up to the fall of the Holy Roman Empire in 1806, the question was as to the others. Gustavus Adolphus of Sweden asserted the equality of all crowned heads, Queen Christina maintained it at the Congress of Westphalia, and in 1718 it was claimed for Great Britain on the occasion of the Quadruple Alliance.

§ 33. A comparison of the antiquity of royal titles shows the following order :

France (accession of Clovis, A.D. 481, besides the rank derived from the character of “eldest son of the Church” attributed to the King of France).

<sup>1</sup> Paris de Grassis Brit. Mus., *Diarium*, MSS. 8440, 8444, quoted by Nys, *Revue de Droit International et Législation comparée*, xxv. 515.

<sup>2</sup> de Maulde la Clavière, 2nd part, i. 65.

Spain (kingdom of the Asturias in 718).  
 England (Egbert, 827).  
 Austria (Hungary a kingdom since 1000).  
 Denmark (Canute, 1015).  
 Two Sicilies (Norman kingdom, 1130).  
 Sweden (1132, reunion of the kingdoms of the Swedes and Goths).  
 Portugal (Affonso I, in 1139).  
 Prussia (kingdom, January 11, 1701).  
 Italy (kingdom of Sardinia, 1720).  
 Russia (assumption of the title of Emperor, October 22, 1721).  
 Bavaria (December 26, 1805).  
 Saxony (December 11, 1806).  
 Württemberg (December 26, 1806).  
 Hanover (October 12, 1814).  
 Holland (May 16, 1816).  
 Belgium (July 2, 1831).  
 Greece (May 7, 1832).  
 Turkey ("admitted to share in the advantages of European public law and concert" by the Treaty of Paris, March 30, 1856).<sup>1</sup>

§ 34. But until the matter was finally settled at the Congress of Vienna in 1815 constant disputes arose.

In 1564 Pius IV declared that France was entitled to precedence over Spain in a question respecting the relative rank of the ambassadors of the two Powers at Rome.<sup>2</sup> In 1633,<sup>3</sup> Christian IV of Denmark having proposed to celebrate the wedding of his son, the Crown prince, a dispute arose between the French and Spanish ambassadors, the Comte d'Avaux and the Marques de la Fuente. The Danish ministers proposed to d'Avaux various solutions of the difficulty, and among these that he should sit next to the King, or next to the Imperial ambassador. To this he replied: "I will give the Spanish ambassador the choice of the place which he regards as the most honourable, and when he shall have taken it, I will turn him out and take it myself." To avoid further dispute, de la Fuente, on a plea of urgent business elsewhere, absented himself from the ceremony. In 1657, a contest of the same kind occurred at The Hague, between de Thou, special ambassador, and the Spanish ambassador Gamarra.<sup>4</sup>

<sup>1</sup> García de la Vega, 525.

<sup>2</sup> Flassan, ii. 66; Prescott, *Philip II* (ed. 1855), 233, says it was Pius V.

<sup>3</sup> Flassan, iii. 13.

<sup>4</sup> Lefevre-Pontalis, *Jean de Witt*, i. 245; Chappuzeau, *L'Europe Vivante*, cited by D. J. Hill, *History of European Diplomacy*, iii. 26.

§ 35. A more serious affair happened in London on September 30, 1661, on the occasion of the state entry of the Swedish ambassador. It was the custom at such "functions" for the resident ambassadors to send their coaches to swell the cortège. The Spanish ambassador de Watteville sent his coach down to the Tower wharf, whence the procession was to set out, with his chaplain and gentlemen, and a train of about forty armed servants. The coach of the French ambassador, Comte d'Estrades, with a royal coach for the accommodation of the Swedish ambassador, were also on the spot. In the French coach were the son of d'Estrades with some of his gentlemen, escorted by 150 men, of whom forty carried firearms. After the Swedish ambassador had landed and taken his place in the royal coach, the French coach tried to go next, and on the Spaniards offering resistance, the Frenchmen fell upon them with drawn swords and poured in shot upon them. The Spaniards defended themselves, hamstrung two of the Frenchman's horses, mortally wounded a postilion and dragged the coachman from his box, after which they triumphantly took the place which no one was any longer able to dispute with them.<sup>1</sup> Louis XIV, on learning of this incident, ordered the Spanish ambassador to quit the kingdom, and sent instructions to his own representative at Madrid to demand redress, consisting of the punishment of de Watteville and an undertaking that Spanish ambassadors should in future yield the *pas* to those of France at all foreign courts. In case of a refusal a declaration of war was to be notified. The King of Spain, anxious to avoid a rupture, recalled de Watteville from London, and despatched the Marques de la Fuente to Paris, as ambassador extraordinary, to disavow the conduct of de Watteville and to announce that he had prohibited all his ambassadors from engaging in rivalry in the matter of precedence with those of the Most Christian King.<sup>2</sup> The question was finally disposed of by the "Pacte de Famille" of August 15, 1761, in which it was agreed that at Naples and Parma, where the sovereigns belonged to the Bourbon family, the French ambassador was always to have precedence, but at other courts the relative rank was to be determined by the date of arrival. If both arrived on the same day, then the French ambassador was to have precedence.<sup>3</sup>

§ 36. Similar rivalry manifested itself between the Russian

<sup>1</sup> *Diary of John Evelyn* (Wheatley's edition), ii. 486; *Pepys' Diary* (under date of Sept. 30, 1661).

<sup>2</sup> Dumont, *Corps universel diplomatique*, vi. pt. ii. 403.

<sup>3</sup> Flassan, vi. 314.

and French ambassadors. The latter had instructions to maintain their rank in the diplomatic circle by all possible means, and to yield the *pas* to the papal and imperial ministers alone. On the other hand, Russia had not ordered hers to claim precedence over the French ambassador, but simply not to concede it to him. At a court ball in London, in the winter of 1768, the Russian ambassador, arriving first, took his place immediately next to the ambassador of the Emperor, who was on the first of two benches arranged in the diplomatic box. The French ambassador came in late, and climbing on to the second bench, managed to slip down between his two colleagues. A lively interchange of words followed, and in the duel which arose out of the incident the Russian was wounded.<sup>1</sup>

§ 37. Pombal, Prime Minister of Portugal, in 1760, on the occasion of the marriage of the Princess of Brazil, caused a circular to be addressed to the foreign representatives, announcing the ceremony, and acquainting them that ambassadors at the court of Lisbon, with the exception of the papal nuncio and the imperial ambassador, would thenceforth rank, when paying visits or having audiences granted to them, according to the date of their credentials. Choiseul, the French minister for foreign affairs, when the matter was referred to him, maintained that "the King would not give up the recognised rank due to his crown, and his Majesty did not think that the date of credentials could in any case or under any pretext weaken the rights attaching to the dignity of France." He added that though kings were doubtless masters in their own dominions, their power did not extend to assigning relative rank to other crowned heads without the sanction of the latter. "In fact," said he, "no sovereign in a matter of this kind recognises powers of legislation in the person of other sovereigns. All Powers are bound to each other to do nothing contrary to usages which they have no power to change. . . . Pre-eminence is derived from the relative antiquity of monarchies, and it is not permitted to princes to touch a right so precious. . . . The King will never, on any pretext, consent to an innovation which violates the dignity of his throne." Nor did Spain accord a more favourable reception to this new rule of etiquette, while the court of Vienna, though the imperial rights had been respected, replied to Paris that such an absurdity only deserved contempt, and suggested consulting with the court of Spain in order to destroy the ridiculous pretension of the Portuguese minister.<sup>2</sup>

<sup>1</sup> Flissan, vii. 376.

<sup>2</sup> *Ibid.*, vi. 193.

§ 38. Pombal's proposal consequently did not succeed, and matters remained in this state until the beginning of last century. At the Congress of Vienna the plenipotentiaries appointed a committee which after two months' deliberation presented a scheme dividing the Powers into three classes, according to which the position of their diplomatic agents would be regulated. But as it did not find unanimous approval, especially with the rank assigned to the greater republics, they fell back upon the simple plan of disregarding precedence among sovereigns altogether, and of making the relative position of diplomatic representatives depend, in each class, on seniority, *i.e.* on the date of the official notification of their arrival. And in order to do away with the last relic of the old opinions that some crowned heads ranked higher than others, they also decided that: "Dans les actes ou traités entre plusieurs puissances qui admettent l'*alternat*, le sort décidera, entre les ministres, de l'ordre qui devra être suivi dans les signatures."<sup>1, 2</sup>

§ 39. The *alternat* consisted in this, that in the copy of the document or treaty which was destined to each separate Power, the names of the head of that state and his plenipotentiaries were given precedence over the others, and his plenipotentiaries' signatures also were attached before those of the other signatories. Thus each Power occupied the place of honour in turn.

§ 40. England and France established the *alternat* between themselves in 1546,<sup>3</sup> though it was not consistently followed thereafter. In the treaty of January 13, 1631, between Gustavus Adolphus and Louis XIII, the name of the latter having been placed first in both originals, the Swedish King protested, and the matter was arranged in accordance with his wishes. France did not claim it in treaties with the Emperor, but refused it to the courts of Berlin, Lisbon and Turin up to the end of the reign of Louis XVI.<sup>4</sup> In 1779, at the Treaty of Teschen, it was observed between the French and Russian courts.<sup>5</sup>

§ 41. When the accession of Philip V to the Quadruple Alliance of 1718 was recorded at The Hague, twelve copies

<sup>1</sup> But though the *règlement* states that the order of signature shall be decided by lot, the signatures appended to that document followed the alphabetical order of the French language, and the same procedure was adopted for the signature of the *acte final* of the Congress of Vienna.

<sup>2</sup> d'Angeberg, *Le Congrès de Vienne*, prem. part. 501, 503, 504, 612, 660, 735 ; deux. part. 932, 939.

<sup>3</sup> de Martens-Geffken, ii. 134 n.

<sup>4</sup> García de la Vega, 253.

<sup>5</sup> de Martens-Geffken, ii. 133 n.

of the Protocol were signed, six for the Emperor and two each for France, Spain and England. The Emperor's plenipotentiary signed first in all, according to the following table :

By Spain ..	..	Emperor, Spain, England, France.
„ „		Emperor, Spain, France, England.
By France..	..	Emperor, France, England, Spain.
„ „		Emperor, France, Spain, England.
By England	..	Emperor, England, Spain, France.
„ „		Emperor, England, France, Spain.
For Spain..	..	Emperor, Spain, England, France.
„ „		Emperor, Spain, France, England.
For France	..	Emperor, France, England, Spain.
„ „		Emperor, France, Spain, England.
For England	..	Emperor, England, Spain, France.
„ „		Emperor, England, France, Spain.

So that, the primacy of the Emperor being recognised, the other three Powers admitted the *alternat* among themselves.

§ 42. It was doubtless to avoid disputes about the *alternat* that on some occasions the practice was substituted of the plenipotentiaries signing only the copy intended for the other party, as in the case of the Treaty of Westminster of January 16, 1756, between George II and Frederick the Great, and other instances. Klüber says that at the Congresses of Utrecht (1713) and Aix-la-Chapelle (1748) each of the High Contracting Parties delivered to each of the others an instrument signed by himself alone.<sup>1</sup>

§ 43. The Holy Roman Empire came to an end in July 1806, in consequence of the establishment of the Confederation of the Rhine, and the precedence over other sovereigns formerly enjoyed by the German Emperor disappeared and could not be claimed by the Emperor of Austria, whose title in 1815 was only eleven years old. Nor was France at that time in a position to reassert her claims to rank before the rest of the Powers. From this date the equality in point of rank of all independent sovereign states, whether empires, kingdoms or republics, has been universally admitted, and it is improbable that any instances of the refusal of the *alternat* in connexion with treaties are now likely to occur, though in the case of multilateral treaties the more convenient method of signing a single instrument in the alphabetical order of the participating countries has in modern times supplanted former methods of signing several originals according precedence to each in turn.

<sup>1</sup> *Acten des Wiener Congresses*, vi. 207.

§ 44. While, however, the events recorded relate to an era when questions of precedence between states were jealously regarded as matters affecting the personal dignity of their sovereigns, it hardly appears that changes to more democratic forms of government lessen the importance attached by states to the maintenance of their position *vis-à-vis* other states. As Vattel said :

“si la forme du gouvernement vient à changer chez une nation, elle n'en conservera pas moins le rang et les honneurs dont elle est en possession. Lorsque l'Angleterre eut chassé ses rois, Cromwell ne souffrit pas que l'on rebâtît rien les honneurs que l'on rendait à la couronne ou à la nation, et il sut maintenir partout les ambassadeurs anglais dans le rang qu'ils avaient toujours occupé.”<sup>1</sup>

The same might be said of France on successive changes from monarchical to republican forms of government.

§ 45. In the Soviet Union diplomatic representatives have the title of “représentants plénipotentiaires” alone, but this title is qualified by ascribing to each in his credential letter the rank of ambassador, minister, etc., so preserving his relative precedence (see § 216). The Soviet representative accredited to China thus became *doyen* of the diplomatic corps.

§ 46. In the Treaty of Versailles and other peace treaties resulting from the Peace Conference of Paris, 1919, the five principal Allied and Associated Powers took precedence of all other states ranged against the Central Powers.

§ 47. Dr. J. B. Scott<sup>2</sup> narrates that at the First Peace Conference at The Hague in 1899 the United States representatives took their place at the table under the letter E (États-Unis), but at the Second Peace Conference of 1907 under the letter A (Amérique), it having in the meantime been remembered that United States of America was the official title ; and he observes that this happy philological discovery enabled the United States delegates at the latter conference to claim the benefit of the first letter of the alphabet, and to take precedence over other American states.

<sup>1</sup> *Droit des Gens*, ii, c. 3, § 39.

<sup>2</sup> *Le Français, langue diplomatique*, 19 ; cited by Genet, *Traité de Diplomatie*, etc., i. 325 n.

## CHAPTER V

### TITLES AND PRECEDENCE AMONG SOVEREIGNS

§ 48. ORIGINALLY the title of "Majesty" belonged to the Emperor alone, who in speaking of himself said: "Ma Majesté." Kings were styled "Highness," or "Serenity." In very early charters the titles *Altitudo*, *Illuster* (for *illustris*) and *Nobilissimus* occur in mentioning the Emperor, and the last of these was given to the King of France until the twelfth century. Sons of emperors were styled *Nobilissimus* or *Purpuratus*.<sup>1</sup> Since the end of the fifteenth century other crowned heads assumed it, the kings of France setting the example. Then it was adopted by King John of Denmark (1481-1513); in Spain by Charles I (V, as Emperor); in England under Henry VIII; by Portugal in 1578.<sup>2</sup> England and Denmark mutually applied it in 1520; Sweden and Denmark in 1685. France first accorded it to the King of Denmark at the beginning of the eighteenth century, and in 1713 to the King in Prussia, whose kingly title dated only from 1701. The Emperor gave it to the King of France at the Peace of Westphalia in 1648, and soon afterwards to other kings. The Emperor Charles VII accorded it to all kings without distinction.

§ 49. The Pope's title of courtesy is Most Holy Father, *Très-Saint Père*, also *Vénérable* or *Très-Vénérable Père*, Holiness, *Sainteté*, or *Béatitude*, and a Catholic sovereign, in addressing him by letter, will sign *dévoué*, or *très-dévoué, fils*. He in turn writes to them as *Carissime in Christo Fili*, or *Dilectissime in Christo Fili*, in Italian *Dilettissimo*, *Carissimo Figlio*. To emperors *Sire* and *Majesté Impériale* are used. Kings are addressed as *Sire* and *Majesté*. For other sovereign princes entitled to royal honours *Monseigneur* and *Altesse Royale*, for those who do not enjoy them *Monseigneur* and *Altesse Sérénissime*. For the heir-presumptive of an imperial or royal crown, *Monseigneur* and *Altesse Impériale*, or *Royale*, as the case may be.

§ 50. The same titles of courtesy are given to empresses,

<sup>1</sup> de Maulde-la-Clavière, 289.

<sup>2</sup> de Martens-Geffken, ii. 25; Pradier-Fodéré, i. 67.

queens and princesses, according to the birth or rank of their husbands, with *Madame* instead of *Sire*. When a princess entitled by birth to be called *Altesse Impériale* or *Royale* marries a prince who has not that title she continues to be addressed by it ; but with this exception, princesses bear the same titles as their husbands, unless a different rule has been established by convention.

§ 51. The German Emperor was *Majesté Impériale et Royale*. The title of the Emperor of Austria was *Empereur d'Autriche, Roi Apostolique de Hongrie*. The Emperor of Russia was *Empereur et Autocrate de toutes les Russies*. The Russian title *Tsar* was not to be used in speaking of him officially. The Emperor of Japan is styled *Tennô* in the Japanese language ; the title *Mikado* is antiquated, and its use is not desired.

§ 52. In accordance with a proclamation made by King George V at Buckingham Palace on May 13, 1927, His Majesty's title is : In Latin, "Georgius V, Dei Gratiâ Magnae Britanniae, Hiberniae et terrarum transmarinarum quae in ditione sunt Britannica Rex, Fidei Defensor, Indiae Imperator" ; and in English, "George V, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India." The French rendering is "Georges V, par la Grâce de Dieu, Roi de Grande Bretagne, d'Irlande et des Territoires britanniques au delà des Mers, Défenseur de la Foi, Empereur des Indes."

It is, however, usual in the preamble of treaties between heads of states to cast the King's title in the shorter form "His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India" ; in French, "Sa Majesté le Roi de Grande Bretagne, d'Irlande et des Territoires britanniques au delà des Mers, Empereur des Indes."

§ 53. Emperors and kings who ceased to reign in consequence of their abdication or for other reasons continue sometimes to receive the title of "Majesty" from friendly sovereigns. The Treaty of Paris of April 11, 1814, provided that their Majesties the Emperor Napoleon and the Empress Marie-Louise should preserve these titles and qualities.

§ 54. The title of *Altesse* (Highness), which at the outset was given principally to Italian sovereign princes, and in Germany to the Electors, as well as to reigning Dukes and Princes, was borne later by princes on whom the German Emperor<sup>1</sup> had conferred it. Although the German title

<sup>1</sup> See footnote, p. 23.

*Hoheit* corresponds literally to *Altesse*, it became a title intermediary between *Altesse Royale* and *Altesse Sérénissime*; but *Hoheit*, when applied to a prince of an imperial or royal family, was always accompanied by *kaiserliche* or *königliche*. By itself *Hoheit*, which implied a sort of superiority to *Durchlaucht*, was adopted in 1844 by reigning princes of the ancient ducal families of Germany, such as those of Saxony, Anhalt, Nassau and Brunswick, in distinction to *Durchlaucht* (likewise signifying *Altesse*), which was borne by sovereign princes (not of ancient descent) of Germany, as well as by high civil or military functionaries on whom, being already princes, it was conferred. The qualification of *Erlaucht* was granted to the ancient families of the German counts mediatised after the dissolution of the empire in 1806.<sup>1</sup> A list of such families may be found in Part II of the *Almanach de Gotha*.

§ 55. The title *Sa Hautesse* (His Highness) was formerly ascribed to the Sultan of Turkey: in the treaties concluded with Turkey in 1854 and 1856 he was styled *Sa Majesté Impériale*, and the latter title became that habitually used. Formerly the Khedive of Egypt was styled *Son Altesse*; the King of Egypt is *Sa Majesté*.

§ 56. The title Grand Duke was originally the prerogative of the reigning princes of Tuscany, after Pope Pius V had conferred it on Cosmo 1<sup>er</sup> de Médicis.<sup>2</sup> Until after the War of 1914-18 it was borne by six reigning princes in Germany, viz.: those of Baden, Hesse, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Oldenburg and Saxe-Weimar-Eisenach. The Grand Duchess of Luxemburg bears this title and is styled Royal Highness. In Russia the heir presumptive to the throne was *Tsarevitch*; all the other members of the Imperial Family bore the titles of Grand Duke and Grand Duchess.<sup>3</sup>

§ 57. In Austria, with the exception of the eldest son of the Emperor, who was Prince Imperial, the other members of the Imperial Family were styled Archduke or Archduchess<sup>4</sup> (Latin, *archidux*, German, *Erzherzog*).

§ 58. The titles formerly accorded to certain republics have become obsolete. The States-General of the United Provinces of the Netherlands were addressed as "Their High Mightinesses" (*Hautes Puissances*), and in the letters written to them by sovereigns they were addressed as *Très-chers amis*, or *Chers et bons amis et alliés*. The Presidents of the United States of

<sup>1</sup> de Martens-Geffken, ii. 27 n.

<sup>2</sup> Genet, *Traité de Diplomatie etc.*, i. 352.

<sup>3</sup> de Martens-Geffken, ii. 24.

<sup>4</sup> *Ibid.*, ii. 23.

America and of the French Republic are addressed by other heads of states as "Good Friend" or "Great and Good Friend."

§ 59. In former times the King of France was designated "le Roi Très-chrétien," and the King of Portugal "le Roi Très-fidèle" since 1748. The King of Spain became "le Roi Catholique" in 1496, the sovereign of Austria-Hungary was "His Imperial and Royal Apostolic Majesty" since 1758. These titles were conferred by various Popes. Leo X bestowed that of "Fidei Defensor" (Defender of the Faith) on Henry VIII in 1521, and his successors have continued to bear this title. The other titles mentioned were never employed by the sovereigns themselves; it was only in addressing or speaking of them that they were used.

§ 60. In early times the Russian sovereigns bore the title of Autocrator, Magnus Dominus, Grand-Prince or Czar (Tsar), the last being the Russian word for Emperor.

The surname Monomachus, or Monomakh, was assumed in the twelfth century by Vladimir II, according to some writers because at the siege of Theodosia (Kaffa) he had vanquished in single combat the general of the Genoese,<sup>1</sup> but according to others, by derivation from the title of his maternal grandfather the Greek Emperor Constantine Monomachus.<sup>2</sup>

In the seventeenth century the Russian sovereigns began to make use of the word *Imperator* in the Latin translations of official documents addressed to other Powers, and it was Peter the Great who in 1721, after his victories over Charles XII, formally took the title of Emperor of Russia. Notification was made of this fact to all the ambassadors of foreign courts, which did not, however, at once decide to recognise the new title. Queen Anne was the first to do this in 1710, when she instructed Lord Whitworth to present an apology to Peter the Great for the insult committed against his ambassador Mathveof (Matveev) in 1708.<sup>3</sup>

§ 61. The Elector of Brandenburg assumed the title of King of Prussia in 1701. It was first recognised by the Holy Roman Emperor, then by most of the other sovereigns of Europe at the conclusion of the Congress of Utrecht. The Pope withheld recognition until 1786.<sup>4</sup>

§ 62. After the creation of the Confederation of the Rhine by Napoleon I, the Electors of Bavaria, Saxony and Württemberg took the title of King, the Margrave of Baden and the

<sup>1</sup> Raabe and Duncan, *History of Russia*, 62 n.

<sup>2</sup> Kluchevsky, *History of Russia*, ii. 22.

<sup>3</sup> Ch. de Martens, *Causes célèbres, etc.*, i. 47.

<sup>4</sup> Pradier-Fodéré, i. 51.

Landgrave of Hesse-Darmstadt that of Grand Duke, and the Prince of Nassau that of Duke. These titles were not at first recognised by all the Powers, but they were tacitly acquiesced in by those which were parties to the Treaty of Paris of May 30, 1814, and by the *acte final* of the Congress of Vienna to which all European sovereigns acceded.

§ 63. On the latter occasion the Emperor of Russia took the additional title of Tsar and King of Poland; the King of England—Elector of Hanover, that of King of Hanover; the King of Sardinia the additional title of Duke of Genoa; the Dutch branch of Nassau those of King of the Netherlands and Grand Duke of Luxemburg; the King of Prussia that of Grand Duke of Posnania and of the Lower Rhine; the Dukes of Mecklenburg-Schwerin, Mecklenburg-Strelitz and Saxe-Weimar that of Grand Duke; and the Landgrave of Hesse-Cassel that of Elector.

§ 64. Since the Popes and the Emperors of the Holy Roman Empire ceased to grant the title of King to other potentates, European Powers adopted the principle that the title taken by the head of a state could not of itself give rise to any sort of precedence over other crowned heads, and that the latter could either recognise the new title, or refuse to do so, or recognise it on conditions.<sup>1</sup>

§ 65. In 1818 the Elector of Hesse-Cassel notified to the diplomatic assembly at Aix-la-Chapelle that he intended to take the title of King, having previously written to the sovereigns of the Five Powers letters in which he asked for their consent. At the sitting of October 11, the plenipotentiaries agreed that the title borne by a sovereign is not a simple matter of etiquette, but a fact involving important political questions, and that they could not collectively give a decision on the request put forward. However, the Protocol stated that the cabinets, taken separately, declared the Elector's request not justifiable on any satisfactory ground, and that there was no inducement to them to accede to it. The cabinets at the same time took an engagement not to recognise for the future any change, either in the titles of sovereigns, or in those of the princes of their families, without coming to a previous agreement. They maintained all that had hitherto been decided in this respect by formal documents (*actes*). The five cabinets explicitly applied this reserve to the title of Royal Highness, which they would henceforth only admit for the heads of grand-ducal houses, including the Elector of Hesse, and their heirs-apparent.<sup>2</sup>

<sup>1</sup> Ch. de Martens, *op. cit.*, ii. 89.

<sup>2</sup> Pradier-Fodéré, i. 53 n.

§ 66. A vote of parliament at Turin on March 17, 1861, conferred on Victor Emmanuel, King of Sardinia, the title of King of Italy, recognised by Great Britain, March 30. It was not at first admitted by Prussia and Austria.

Prince Ferdinand of Bulgaria took the title of King on October 5, 1908, and was recognised as such by the Great Powers of Europe between April 20 and 29, 1909, n.s.

Prince Charles of Roumania was unanimously elected King by the national representatives, March 14, 1881.

Prince Milan of Serbia took the title of King, March 6, 1881.

King Haakon became King of Norway, November 18, 1905.

King Zogou was proclaimed King of Albania, September 1, 1928.

§ 67. Certain sovereigns use three sorts of title : the *grand titre*, the *titre moyen* and the *petit titre*.

The first of these includes the names of the fictitious as well as of the real dominions. For instance, the King of Spain's *grand titre* included the two Sicilies, Jerusalem, Corsica, Gibraltar, Austria, Burgundy, Brabant and Milan, Habsburg, Flanders, Tyrol, all of which were fictitious, one of them, Jerusalem, being also claimed in the *grand titre* of Austria. Those of the King of Prussia and the Emperor of Russia also were very long. The latter is shown in § 122.

The *titre moyen* is confined to real facts, and the *petit titre*, the most generally used, is the highest of all—namely, that by which the sovereign is habitually designated.

§ 68. Sovereigns in addressing each other officially begin *Monsieur Mon Frère* (*Sir My Brother*), adding the name of any blood relationship that may exist between them. To an empress or queen it is *Madame Ma Sœur* (*Madam My Sister*) ; to a reigning Grand Duchess, *Madam My Sister and Cousin*.

§ 69. Letters from the Pope to the British court may begin "Serenissimo Augustoque Principi" . . . "Serenissime Rex, salutem et felicitatem" ; or "Augusto Principi . . ." "Auguste Rex et Imperator salutem et felicitatem." The reply begins, "Your Holiness."

§ 70. A Foreign Office memorandum says that other forms of writing Royal letters are : 1st, commencing with "Sir My Brother" (or "Sir My Cousin," etc., as the case may be), and ending thus :

"Sir My Brother,  
Your Majesty's  
Good Brother."

2nd, commencing with the King's titles. In these letters the plural "We" and "Our" are employed instead of "I" and "My," and the letters terminate thus : "Your Good Friend." This form is used mainly for Royal letters to Presidents of Republics.

§ 71. Titles of heirs-apparent, when not styled Prince Imperial or Prince Royal :

Belgium : Duc de Brabant.

Great Britain : Prince of Wales (by patent).

Italy : Prince of Piedmont.

Roumania : Grand Voivode of Alba Julia.

Sweden : Duke of Scania.

As long as the Holy Roman Empire continued to exist, the heir-apparent was designated King of the Romans (by election). Napoleon I copied this when he conferred on his infant son the title of King of Rome.

The heir-apparent of the *German Emperor* was Kronprinz, so also the heir of the Emperor of *Austria*.

§ 72. As no rule has been devised for regulating precedence among sovereigns or among the members of their respective families, the question of the relative place to be taken by them on the occasion of a gathering of more than two must naturally present difficulties. The meeting of the emperors Napoleon I and Alexander I at Erfurt, in September 1808, was attended by a number of kings, grand dukes and princes belonging to the Confederation of the Rhine. Among them were the Kings of Saxony, Württemberg, Westphalia, Bavaria, the Dukes of Oldenburg, Saxe-Weimar, Saxe-Coburg-Gotha, Mecklenburg-Schwerin and Mecklenburg-Strelitz, and the Prince of Thurn and Taxis. At a great dinner at Weimar on October 6, the order among these kings seems to have been Westphalia, Bavaria, Württemberg, Saxony.<sup>1</sup>

§ 73. At the Congress of Vienna in 1814-15 there was an assemblage of crowned heads. Francis I of Austria was the host, and among the guests Alexander I of Russia naturally ranked first. Next to him was the King of Prussia. Among the lesser sovereigns Christian VI doubtless had the first place. Then in order came Maximilian Joseph I of Bavaria and Frederick I of Württemberg, the Elector of Hesse and the Grand Duke of Baden.<sup>2</sup>

§ 74. During the meeting of the three emperors (Austria,

<sup>1</sup> Vandal, *Napoléon et Alexandre 1er*, i. 414, 444.

<sup>2</sup> *Cambridge Modern History*, ix. 580 et infra.

Germany, Russia) at Berlin in 1872, these sovereigns took precedence over each other alternately in each succeeding ceremony, and the national hymns of each country were also played accordingly.

§ 75. On the occasion of the Vienna Exhibition of 1873, the sovereigns representing the Great Powers, including the King of Italy and the Sultan, enjoyed precedence over one another in alphabetical order according to the French language. A similar rule was observed as regarded the hereditary princes.

§ 76. It is not usual for crowned heads to attend at each other's coronations, marriages and on other similar occasions, but they are often represented by members of their families. The order in which these are placed must be determined by the court officials, or in the last resort by the sovereign who is host. At the inauguration of King Leopold of Belgium in December 1865, when one crowned head, the King of Portugal, was present, he naturally had the place of honour. Next to him came the Comte de Flandre (Belgium), the Prince of Wales (Great Britain), Prince Arthur of England, the Crown Prince of Prussia, the Duke of Cambridge, the Archduke Joseph of Austria, Prince George of Saxony, Prince William of Baden, Prince Nicholas of Nassau, Prince Louis of Hesse, Prince Augustus of Saxe-Coburg-Gotha, and Prince Leopold of Hohenzollern-Sigmaringen.<sup>1</sup>

§ 77. At King George's coronation at London in 1911, which, in accordance with custom, was not attended by crowned heads, the order of precedence followed appears to have been: Crown Princes of Great Powers, followed by other princely representatives of such Powers; the Prince of Wales; Crown Princes of lesser Powers; German Grand Dukes; representatives of the United States and France; the Duke of Connaught and Princesses of the British Royal Family; the special envoy of the Vatican; princely, grand ducal and ducal members of the German, Netherlands and Greek Royal houses; Princes of lesser Oriental states; followed by special envoys accredited by foreign states to take part in the ceremonies.

§ 78. The frequent intermarriages between members of Christian reigning families created a bond of relationship among the crowned heads and render it natural and usual to communicate to each other news of events, such as accession to the throne, births, marriages and deaths, etc. On important occasions communications are also addressed by the sovereign

<sup>1</sup> García de la Vega, 561.

to presidents of republics. Such notifications are in the form of letters from the sovereign and are transmitted through his diplomatic agents, with instructions to present them through the appropriate channel, and this is done by forwarding them to the minister for foreign affairs, with the request that they may be communicated to their high destination. Sometimes a special mission is sent, particularly on such occasions as accession to the throne, or a coronation, or the celebration of a national event of exceptional importance. If the distance is great, the local diplomatic agent may be accredited as special ambassador or envoy for the occasion.

§ 79. Questions of precedence have sometimes arisen as between the diplomatic agents, permanently accredited, and those accredited for the purpose of such ceremonial missions. According to Article 3 of the Regulations adopted at the Congress of Vienna (§ 277) those engaged on an extraordinary mission have not on this ground any claim to precedence. But in practice some variation exists. M. Genet recalls that on the accession of Pedro V of Portugal the special envoys of Great Britain, Austria, Belgium and Saxony took precedence over the ministers accredited to Lisbon, and ceded it only to the nuncio; while at the coronation of the Emperor Alexander II of Russia the permanent diplomatic agents maintained precedence over those specially accredited for the occasion and having equivalent rank. At the accession of Leopold II of Belgium the specially accredited agents took precedence over the permanent envoys.

“D’une manière générale la personne chargée de mission spéciale n’a pas de rang diplomatique proprement dit, à raison de la mission spéciale, tout en ayant cependant le caractère diplomatique.

“Tout agent accrédité a donc en principe le pas sur elle; en pratique pourtant et comme par une faveur insigne, le pas leur est généralement cédé et on témoigne des égards tout particuliers aux envoyés de cette catégorie. ‘Ils ne prennent pas la préséance, ils la reçoivent.’ *Inter se*, ils se classent suivant le grade réel; à grade égal, c’est l’ordre de la remise des lettres de créances qui leur donne le rang.”<sup>1</sup>

At the coronation of King George V, § 77 appears to show that the special representatives attending the ceremony enjoyed precedence.

§ 80. Friendly sovereigns sometimes exchange high orders of chivalry, which are occasionally also conferred on members of reigning families. On the outbreak of war, in August 1914,

<sup>1</sup> Genet, *op. cit.*, i. 86.

the Emperor of Austria, the German Emperor, the King of Württemberg, the Duke of Saxe-Coburg, the Duke of Cumberland, the Grand Duke of Hesse, Prince Henry of Prussia, the German Crown Prince and the Grand Duke of Mecklenburg-Strelitz having become enemies, ceased to be members of the Most Noble Order of the Garter, and their banners were removed from St. George's Chapel at Windsor. When one sovereign confers a decoration on another, the intention to confer is expressed by letter. On rare occasions the Garter has been conferred on a foreign sovereign on the occasion of his visiting England. Usually it has been conveyed to him by a complimentary special mission.<sup>1</sup>

§ 81. An official notification made by the Vatican in December 1931 to diplomatic representatives accredited to the Holy See says that cardinals are regarded as equal in rank to princes of the blood, and, in accordance with canon law, claim precedence over everyone except sovereigns and crown princes (*principi hereditari*).

<sup>1</sup> For an account of what takes place in connection with the investiture see Redesdale, *Garter Mission to Japan* (1906).

## CHAPTER VI

### MARITIME HONOURS

§ 82. At the so-called Congress of Aix-la-Chapelle, in 1818, a protocol was signed on November 21 which contained the following paragraph :

“ Des doutes s'étant élevés sur les principes à observer relativement au salut de mer, il est convenu que chacune des Cours signataires de ce protocole fera remettre à la Conférence ministérielle à Londres les règlements qu'elle fait observer jusqu'ici à cet égard, et que l'on invitera ensuite les autres Puissances à communiquer les mêmes notions de leur côté, afin que l'on puisse s'occuper de quelque règlement général sur cet objet.”

This protocol bears the signatures of Metternich, Wellington, Nesselrode, Richelieu, Hardenberg, Capo d'Istria, Castlereagh and Bernstorff.

Nothing seems to have been done at the time to carry this agreement into effect. Certain arrangements have, however, since been entered into between the maritime Powers ; in particular those referred to in Articles 72 and 90 of the King's Regulations and Admiralty Instructions, extracts from which are appended to this Chapter.

§ 83. The British rules governing the number of guns forming a salute to each class of diplomatic officers, the places and occasions, are set forth in Article 66 of the King's Regulations and Admiralty Instructions. It is to be observed, however, that not all of his Majesty's ships are “ saluting ships ” ; the point is mainly governed by the size of the ship and the number of guns that can be fired for saluting purposes. The number of guns accorded in British practice may occasionally differ from the number accorded in the practice of other countries.

§ 84. When a British diplomatic agent pays an official visit in a foreign port to the officer commanding the naval forces of his (the agent's) own country, he is received on board with much ceremony. A salute is fired, in conformity with the table shown in Article 66, at the moment

when he leaves the ship to return on shore. He acknowledges the compliment by removing his hat until the last gun is fired. If he desires it, the commanding officer of the ship he visits will send a boat to bring him and his suite, if any, on board, and back again ashore. In going on board the person of highest rank ascends the ship's side first. When he leaves her to take his place in the boat, he is the last to leave the ship's deck and enter the boat. (As regards uniform to be worn on such occasions see § 475.)

§ 85. When men-of-war happen to be lying in a foreign port on the occasion of a national ceremony it is customary for British warships to adopt the same ceremonial as regards salutes, dressing ship and half-masting flags, as the ships of the foreign nation concerned, provided, of course, the occasion is one which can be properly recognised by His Majesty's Government. A royal salute is one of twenty-one guns.

§ 86. These are, however, matters with which the diplomatic agent is not, as a rule, concerned, except in countries where the capital happens to be situated at a port where ships can lie, and the conduct of the ceremonies to be observed in such cases concerns the naval officers; the diplomatic official does not intervene, but he will do well, if resident at such a place, to inform himself of the rules that are observed in this respect by the navy of his own country.

§ 87. In many countries there exists a regulation prohibiting more than a certain number of war-ships of any foreign country from lying at the same time in a port of the country. When an official friendly visit is to be paid by a larger number, the diplomatic agent will probably be the channel through whom the arrangements have to be made, and he may perhaps be afforded an opportunity of presenting some of the principal officers of the squadron to the sovereign or president at a private audience granted for the purpose.

§ 88. The regulations with regard to salutes by His Majesty's ships to foreign sovereigns or other distinguished personages, dressing of ship, visits and other matters of etiquette, are laid down in the King's Regulations and Admiralty Instructions, the following Articles of which contain all such information as is likely to be of interest to British diplomatic officers :

#### ROYAL SALUTES AND FLAGS

40. *Salutes to (British) Royal Family.*—Whenever any members of the Royal Family shall arrive at, or quit, any place where there is a fort or battery from which salutes are usually fired, they shall

receive a Royal salute on their first arrival and final departure, from such fort or battery, and from all His Majesty's ships present. Any ship arriving at or leaving that place during the stay of a member of the Royal Family, shall also fire a Royal salute on arrival or departure.

2. Whenever any member of the Royal Family shall go on board any of His Majesty's ships, the Standard of His or Her Royal Highness shall be hoisted at the main on board such ship, and a Royal salute shall be fired from her, on such member of the Royal Family going on board, and again upon leaving her.

3. Whenever any member of the Royal Family shall be embarked in any ship or vessel, and the Standard of His or Her Royal Highness shall be hoisted in her, every one of His Majesty's ships meeting, passing or being passed by her shall fire a Royal salute.

43. *Foreign Sovereigns or Chiefs of States.*—Whenever any foreign Crowned Heads or Sovereign Princes, or the consorts of any foreign Crowned Heads or Sovereign Princes, or the President of a Republic, shall arrive at or quit any place in His Majesty's dominions they shall receive a Royal salute on their first arrival and again on their final departure from any ships present and from any fort or battery at such place, from which salutes are usually fired ; and from any ship on her arrival or departure, which may arrive at or leave that place during the stay of such foreign personage. A similar salute is also to be fired upon their going on board or leaving any of His Majesty's ships. On such occasions all ships shall be dressed, either overall or with masthead flags as may be ordered, in accordance with Article 93. . . .

4. The following procedure is to be observed in the case of a foreign warship which is wearing a Royal or Imperial Standard or President's flag visiting a British port :

- (a) The visiting warship will salute the flag of the country.
- (b) National salute is returned by the above battery.
- (c) British warships present and shore battery salute Royal, Imperial or Distinguished personages.

44. *Foreign Royal or Imperial Family.*—Whenever any Prince or Princess, being a member of a foreign Royal or Imperial Family, shall arrive at or quit any British port, or visit any of His Majesty's ships, the same salutes shall be fired and compliments paid to him or her as are directed by Article 40 to be paid to the members of the British Royal Family, the flag of the nation of such foreign Prince or Princess being displayed at the main.

2. *In Foreign Ports.*—Whenever such visits to His Majesty's ships shall take place in a foreign port, corresponding salutes shall be fired, and the flag of the nation of the Royal or Imperial visitors hoisted, as already explained.

46. *Standards of Royal or Imperial Personages at Foreign Ports.*—Whenever any of His Majesty's ships arrive at a foreign port in which salutes are returned (see Article 72) and where the Standard

of any Royal or Imperial personage, British or foreign, or the flag of the President of a Republic, is hoisted, the customary salute to the flag of the nation to which the port belongs is in all cases to be fired first, the Standards or President's flag present being subsequently saluted in the order directed in Article 45.

2. *Salute to National Flag.*—In case the Standard of any member of the Royal or Imperial Family or the flag of the President of the Republic of the nation to which the port belongs is hoisted in the port, the salute to the national flag is to be considered as personal to that Standard or flag as representing the nation, and in this case the salute will not be returned.

In the event, however, of this salute being returned, a further salute of 21 guns is to be fired.

50. *Birthday of Foreign Sovereigns or other National Festivities.*—On the occasion of the celebration of the birthday of the King or Queen of a foreign nation, or of other important national festivals and ceremonies, by any ships of war or batteries of such nation, His Majesty's ships present may, on previous official information being received by the Senior Officer, fire such salutes in compliment thereto, not exceeding 21 guns, as are fired by the ships or batteries of the foreign nation, the flag of such nation being displayed at the main during the salute only, or the ships being dressed in accordance with Article 93, in conformity with the action taken by the ships of such nation.

50A. *Death of Foreign Sovereign or Chief of State.*—Orders concerning the ceremony to be observed will be issued by the Admiralty on each occasion. The usual procedure to be followed will be for the flag to be half-masted on the day of the funeral only, with the ensign (if available) or the national flag of the bereaved nation at the dip on the mainmast. No gun salutes are to be fired unless specially ordered.

2. In the event of His Majesty's ships being in company with a ship or in a port of the bereaved nation, His Majesty's ships are to act in unison with the procedure adopted by the Commanding Officer of the foreign ship or with the observances in the port.

In the event of a ship of the bereaved nation being in a British port, His Majesty's ships should act in unison with the procedure adopted by the foreign ship.

#### SALUTES TO BRITISH AUTHORITIES

66. British authorities shall be saluted when in their official capacities as laid down in the following table (extract) :

Ambassador Extraordinary and Plenipotentiary	19 guns.	{ At all places, whenever he embarks, and if he goes to sea in a ship, on finally landing, by such ship. No limitation of occasion.

Envoy Extraordinary and Minister Plenipotentiary, and others accredited to sovereigns (with the exception of such as are accredited in the specific rank of Minister Resident)	17 guns	} Within the precincts of the nation to which he is accredited. By the ship from which he may land, and also that in which he may finally embark. When visiting a ship, upon going on board or on quitting her. As the occasion arises. Only once within twelve months and by one ship only on the same day.
Minister Resident, Diplomatic authorities below the rank of Envoy Extraordinary and Minister Plenipotentiary, and above that of Chargé d'Affaires	15 guns	
Chargé d'Affaires, or a subordinate diplomatic agent left in charge of a mission	13 guns	
Consul-General . . . .	11 guns	} Within the foreign port to which he belongs. When visiting a ship, upon going on board or on quitting her. Only once within twelve months, and by one ship only on the same day.
Consul . . . . .	7 guns	

## NATIONAL SALUTES, ETC.

72. The Captain of a ship, or the Senior Officer of more than one ship, visiting a foreign port where there is a fort or saluting battery, or where a ship of the nation may be lying, shall salute the national flag with 21 guns, on being satisfied that the salute will be returned. A salute is not to be fired when passing through territorial waters with no intention of anchoring, or making fast in any way, in them, even if a saluting station is passed, unless unusual circumstances make it desirable.

The salute shall be fired on each occasion that a ship visits a foreign port, except that of a ship leaving port temporarily, when, by agreement with the local authorities, the salute on her return may be dispensed with. This rule has been concurred in by the maritime Powers generally.

2. When a ship visits a foreign port where there is no saluting battery and no ship of the nation is lying on arrival and a ship of the nation arrives during the visit, a salute to the national flag shall only be fired after mutual agreement between the Senior Officers of the ships concerned.

3. If a ship of a senior British Officer is already present in the port, the junior will not fire a salute.

73. *Recognised Governments*.—Salutes to foreign Imperial and Royal personages and other foreign authorities and flags are only authorised in the case of a government formally recognised by His Majesty.

74. *Salutes to Foreign Functionaries*.—Salutes in conformity with the table of salutes given in Article 66 shall be fired in compliment to foreign officials, from either ships or forts, in the same manner and in circumstances similar to those in which salutes to a British official would be fired.

(See also Article 78—Salutes to foreigners visiting His Majesty's ships.)

78. *Salutes to Foreigners visiting His Majesty's Ships*.—If a foreigner of high distinction, or a foreign General Officer or Air Officer, should visit any one of His Majesty's ships, he may be saluted on his going on board, or on leaving the ship, with the number of guns with which he, from his rank, would receive on visiting a ship of war of his own nation ; or with such number of guns not exceeding 19 as may be deemed proper ; should the number of guns to which he is entitled from ships of his own nation be less than is given to officers of his rank under Article 66, he is to be saluted with the greater number.

#### SALUTES WHICH ARE TO BE RETURNED OR NOT RETURNED

90. *To Foreign Royal or Imperial Personages or Authorities*.—In the case of salutes from His Majesty's ships, forts and batteries to foreign Royal or Imperial personages and other functionaries, the following arrangement entered into with the maritime Powers is to be observed :

1. *Salutes not returned*.—Salutes from ships of war which will not be returned :

- (a) to Royal or Imperial personages, Presidents of Republics, Chiefs of States or members of Royal or Imperial Families, whether on arrival at, or departure from, a port, or upon visiting ships of war ;
- (b) to Diplomatic, Military or Consular authorities, or to Governors or Officers administering a Government, whether on arrival at, or departure from, a port, or when visiting ships of war ;
- (c) to foreigners on visiting ships of war ;
- (d) upon occasions of national festivities or anniversaries.

*Note*.—By this clause (taken in conjunction with clause 3) His Majesty's ships will not return a personal salute to a British officer fired by foreign vessels ; nor will such return salute be expected by the officers of a Power which adheres strictly to the international arrangement. If, however, on any occasion where personal salutes are exchanged, a personal salute, fired by one of His Majesty's ships or by the ship of some third nation to a foreign officer is returned, it is an excess of courtesy which it would be

impossible not to reciprocate by returning any personal salute to a British officer fired immediately afterwards under like conditions. His Majesty's ships may even take the initiative in returning personal salutes, if such is known to be the custom of the nation whose ship has saluted, and if it is expected that a personal salute to an officer of that nation will presently have to be fired and will be returned.

2. *Salutes returned*.—Salutes from ships of war which will be returned gun for gun :

(a) to the national flag on anchoring at a foreign port, except in the circumstances detailed in Article 46 (2).

3. *Reciprocity with Foreign Ships*.—When foreign ships of war salute the British flag or British Royal or other personages, or any of His Majesty's functionaries in similar circumstances, the same rules are to be reciprocally observed by His Majesty's ships present, as to returning or not returning the salutes.

#### DRESSING SHIP AND FLAGS, ETC.

93. *Dressing Ship*. . . .

4. His Majesty's ships are also to be dressed by order of the Senior Officer present when in the presence of a Royal or Imperial Standard on occasions of visits of Royal or Imperial personages, and on certain foreign ceremonial occasions when in the presence of ships, or in the waters, of the nations concerned. The manner of dressing and time during which ships are to be dressed are to be stated on each of these occasions according to circumstances.

94. *Flags hoisted during Salutes*.—When salutes are interchanged with foreign ships of war or forts or batteries, or when salutes to flag and personal salutes are fired in honour of foreigners, the following rules as to the flags that shall be displayed are to be observed by His Majesty's ships :

(a) *Royal or Imperial Personages, etc.*—In the case of a foreign Royal or Imperial personage, President of a Republic or Chief of State, the flag of the nation of such Royal or Imperial personage, &c., is to be hoisted at the main, if necessary, alongside any Standard, flag or broad pendant which may already be hoisted in that position.

(b) *National Flag*.—On arrival at a foreign port, the flag of the foreign nation which is being saluted is to be hoisted at the main during the salute, if necessary, alongside any Standard, flag or broad pendant which may already be hoisted in that position.

(c) . . . .

(d) *Visits of Foreign Authorities*.—On the occasion of visits from Governors-General, Governors or Officers administering a government, Diplomatic, Naval, Military, Air or Consular authorities, or of persons of high distinction entitled

to salutes, the flag of the foreign nation to which the person saluted belongs is to be hoisted at the fore during the personal salute, if necessary, alongside any flag or broad pendant which may already be hoisted in that position.

2. *To British Authorities.*—The distinguishing flags particularised in Article 112 are to be hoisted respectively at the fore whenever any of His Majesty's Military, Air, Diplomatic, Dominion, Colonial or Consular authorities are receiving salutes to which they may be entitled; should, however, the proper distinguishing flag not be on board the ship saluting, the blue ensign is to be hoisted when saluting Consular officers, and the red ensign when paying the same honours to any of the other authorities. Should the ship have neither a red nor blue ensign, a white ensign may be hoisted at the fore when saluting any of the British authorities referred to.

#### VISITS OF CEREMONY

95. *Visits to Foreign Ports.*—The preliminary arrangements for visits of His Majesty's ships to foreign ports will always be made by the Foreign Office with the foreign government concerned, except

(a) on certain foreign stations, where the Commander-in-Chief is authorised to communicate direct with His Majesty's representative in the country which it is proposed to visit; and

(b) in the circumstances specified in clause 3.

2. As soon as the consent of the foreign government concerned has been obtained, the Senior Officer of the visiting fleet or squadron, or the Commanding Officer of a single ship, will notify the British Consul direct of the date and time of the intended arrival of the fleet, squadron or ship at the foreign port and the probable duration of the visit. Ceremonial visits are to be exchanged in accordance with Articles 95a, 96, 97 and 98.

The customary visit to the Governor or Chief Authority at a foreign port should always be made unless there is some special reason for not doing so. Communication should always be established with the Consular officer on arrival.

3. In the event of a visit of His Majesty's ship to a foreign port being of very short duration and purely informal as distinct from a ceremonial nature, *e.g.* for the purpose of shipping or landing persons or stores, the British Consul is to be notified of the proposed visit direct by the Commanding Officer of the ship, with a request that the local authorities may be informed. The British representative at the seat of government of the country visited is to be notified at the same time that the visit will be made, and requested to inform the government of the informal character of the proposed visit.

Communication should be established with the consular officer on arrival, and the Commanding Officer should consult with him as to the practicability of exchanging any ceremonial visits. When

a call is made at a naval port, visits should always be paid to the naval authority.

95a. *To Foreign Authorities.*—The Governor of a province, territory or colonial possession, if residing in or near the port, is to receive the first visit from the Senior Officer in command of His Majesty's ship or squadron visiting a foreign port.

The visit will be returned in person to all Flag Officers and Commodores, and by an Aide-de-Camp, or other officer, to officers of lower rank.

*To Foreign Civic Authority.*—The chief civilian authority of the port should, as a general rule, receive the first visit from the Senior Officer in command of His Majesty's ship or squadron visiting a foreign port.

97. *British Diplomatic Functionaries.*—Every Flag or other officer in command will, on arrival, pay the first visit to His Majesty's diplomatic functionaries in charge of embassies or legations, of or above the rank of Chargé d'Affaires, but they will receive the first visit from diplomatic functionaries below that rank.

2. In case of doubt as to the status of a diplomatic functionary in charge of an embassy or legation, an officer should be sent on shore to ascertain it previous to the interchange of visits.

98. *Consular Authorities.*—On the arrival of a fleet, squadron or ship at a foreign port, the first visit will be made by the naval or consular officer who is subordinate in rank to the other, according to the following scale :

- (a) Consuls-General . . . . To rank with, but after Rear-Admirals.
- (b) Consuls . . . . . To rank with, but after Captains of the Royal Navy.
- (c) Vice-Consuls . . . . . To rank with, but after Lieutenant-Commanders.
- (d) Consular Agents . . . . To rank with, but after Lieutenants.

2. The officer in charge of a consular post during the absence of the titular incumbent will take for the time being the rank of that incumbent.

100. *Boats for Visits.*—The Senior Officer present will arrange, when necessary, to provide a suitable boat to enable the Diplomatic, Dominion, Colonial or Consular officer to pay any official visits afloat, and to take him ashore, on the officer notifying his wishes to that effect.

110. *Flags and Pendants displaced.* By Admiralty Flag.

3. The flags of other functionaries ordered to be hoisted in ships of war by Articles 112 to 114 . . . are not to displace at the mast-head the flag of an Admiral of any grade, nor the broad pendant of a Commodore of either class. When therefore a flag or broad pendant is hoisted, the distinguishing flag of the civil or military functionary is, if possible, to be hoisted at another masthead ; but

if not possible, then it is to be hoisted side by side with the other, subject to the discretion conferred on the Senior Naval Officer in Article 114.

#### DISTINGUISHING FLAGS, ETC.

112. *Particulars of Flags*.—The flags authorised by His Majesty to be displayed afloat are :

- (a) . . .
- (b) By His Majesty's diplomatic servants, the Union flag, with the Royal Arms in the centre thereof on a white ground encircled by a garland.
- (c) . . .
- (d) By Consuls-General, Consuls and Consular Agents, the blue ensign with the Royal Arms in the centre of the fly thereof, that is in the centre of that part between the Union and the end of the flag.

2. No other distinguishing flag or flags are authorised to be worn afloat by any of these functionaries.

113. *When to be Hoisted*.—Whenever any of the functionaries particularised in Articles 99 and 112 are embarked :

- (a) In a boat for the purpose of paying visits of ceremony or on other official occasions—the proper distinguishing flag within the respective limits prescribed by the following clause (b) may be hoisted at the bow, but when the boat belongs to one of His Majesty's ships she is to have her white ensign flying.

(b) In one of His Majesty's ships for passage :

- (i) . . .
- (ii) *If a diplomatic functionary and in charge of a mission*—the proper distinguishing flag, with the approval of the Senior Naval Officer, may be hoisted at the fore, and be kept flying within the limits of the mission, provided the diplomatic functionary be proceeding on the public service.
- (iii) . . .
- (iv) The distinguishing flag of consular authorities is to be hoisted in boats only and not in ships, except when they are being saluted.
- (c) In one of His Majesty's ships on the occasion of an official visit—the distinguishing flags are to be hoisted respectively at the fore whenever any of His Majesty's Military, Air, Diplomatic, Dominion, Colonial or Consular functionaries are receiving salutes to which they are entitled.
- (d) In British ships and boats, other than those of His Majesty, these functionaries, except consular officers as to ships, are, with the sanction of the owners or masters, authorised to fly their proper distinguishing flags on the same occasions, and within the same limits, and these regulations shall be

a sufficient warrant to the master under the Merchant Shipping Act for so doing, but the permission to hoist such masthead flags indicative of the presence on board of any of these functionaries in no way affects or alters the character or status of the merchant ship in time of peace or in time of war, whether His Majesty is belligerent or neutral.

114. *Approval of Senior Officer.*—With regard to the previous approval of the Senior Officer, whenever a requisition is received for the embarkation or conveyance of any of the functionaries particularised in Article 99 or 112, the Senior Officer present, in the absence of special orders from superior authority, will issue the necessary directions, provided that, after consultation with, and on requisition from, the official to be embarked, he considers it for the benefit of the service about to be performed that such flag should be hoisted within the authorised limits. Should the officer who has to determine the question consider it, in the circumstances, undesirable that the distinguishing flag should be hoisted, he is to inform the functionary of his reasons, and at once report the same for the information of the Admiralty.

2. *When Ambassador, etc., is Embarked.*—In the event of an Ambassador being embarked, or a Governor-General, Governor, High Commissioner, etc., of a Dominion or Colony being detached on a foreign mission in his official capacity as Governor-General, Governor or High Commissioner, special instructions will be issued in each case as to the flag which should be hoisted in a man-of-war in which he may be embarked ; in the absence of instructions from the superior authority, the Senior Officer present is to exercise his discretion in consultation with the official about to embark.

## CHAPTER VII

### THE LANGUAGE OF DIPLOMATIC INTERCOURSE, AND FORMS OF DOCUMENTS

§ 89. FORMERLY the language in universal use was Latin, which may be said to have been at first the only language in which men knew how to write, at least in central and western Europe. When French, Spanish, Italian and English took on a literary form, the instructions to diplomatic representatives came to be framed in the language of the envoy's own country, - German was the latest of all to be written. Latin was also used in conversation between diplomatists, where the parties were unable to speak each other's language. French came next in frequency of use after Latin. At the end of the fifteenth century it had become the court language of Savoy and the Low Countries, and also of the Emperor's court. When the League of Cambrai was formed, in 1508, the full powers of both Imperial and French negotiators were drawn up in French, but the ratifications were in Latin. Henry VI of England wrote to Charles VII of France in French, and that language was usually employed both in writing and speaking between the two countries. At the end of the sixteenth century the King of France no longer writes Latin except to the King of Poland, to such an extent had the use of French gained ground.<sup>1</sup>

§ 90. At the beginning of the sixteenth century all agreements drawn up in English, German or Italian have a domestic or quasi-domestic character. English served for Anglo-Scottish relations, German for those of German princes and of Germany with Bohemia, Hungary and Switzerland. Italian was sometimes employed between the smaller Italian states. In the Low Countries, Lorraine, and at Metz, French was naturally the native language. Only two languages, however, were admitted for drawing up international compacts: Latin for the apostolic notaries and the whole school attached to the Roman Chancery, and French. England and Germany con-

<sup>1</sup> de Maulde-la-Clavière, i. 80, 389.

stantly used the latter, above all for treaties with France and the Low Countries. At the end of the fifteenth century England reverted to Latin for its treaties with France.<sup>1</sup>

§ 91. The treaties of Westphalia (1648) were in Latin. The Treaty of January 30, 1648, between Spain and the United Provinces, by which the independence of the latter was recognised, was in French and Dutch, but Latin was used for all communications between France and the Empire up to the time of the French Revolution.<sup>2</sup> The Anglo-Danish Treaty of July 11, 1670, was in Latin; also the Anglo-Dutch Treaty of 1674; but the Treaty of Alliance of 1677-8 in French. The Treaty of the Grand Alliance of September 7, 1701, was in Latin, and likewise that of May 16, 1703, between Great Britain, the Emperor and the States-General, members of the Grand Alliance, and Portugal. In 1711 Queen Anne wrote to her allies in Latin, and the full powers given to her plenipotentiaries for the Congress of Utrecht were in the same language. But at the first conference, in 1712, the English demands were presented in French, as were also those of Prussia, Savoy and the States-General. The commercial treaty between England and France of April 11, 1713, was in Latin, certain forms appended were in Latin and French, and the Queen's ratification was in Latin. But the certificate of the exchange of ratifications was drawn up in French. The treaties signed on the same day by France with Portugal, Prussia, the Duke of Savoy and the States-General were in French. Sweden and Holland exchanged correspondence about the same period in Latin, but Peter the Great used French. On July 13, 1713, Spain and Savoy signed a treaty of peace in Spanish and French, while the treaty of peace of September 7, 1714, signed by the Emperor and the Empire with France, was in Latin. Russia used German in her early treaties with Brandenburg; with Austria, German, Latin and French on different occasions, but from about the middle of the eighteenth century always French; with England always French from 1715 onwards.<sup>3</sup>

§ 92. At Aix-la-Chapelle, in 1748, a separate article was annexed to the treaty of peace signed by Great Britain, Holland and France, to the effect that the use of the French language in the treaty of peace was not to be taken as prejudicing the right of the contracting parties to have copies signed in other languages.

<sup>1</sup> de Maulde-la-Clavière, i. 209.

<sup>2</sup> Garden, *Histoire des Traités de Paix*, v. 155 n.

<sup>3</sup> F. de Martens, *Recueil des Traités*, etc., v. and ix. (x.).

§ 93. A similar article was attached to the Treaty of Paris of 1763, between Great Britain, France and Spain, and to the Treaty of Versailles of 1783, between Great Britain and France.<sup>1</sup> Article 120 of the Final Act of the Congress of Vienna declared that :

“ La langue française ayant été exclusivement employée dans toutes les copies du présent traité, il est reconnu par les Puissances qui ont concouru à cet acte que l'emploi de cette langue ne tirera point à conséquence pour l'avenir ; de sorte que chaque Puissance se réserve d'adopter, dans les négociations et conventions futures, la langue dont elle s'est servie jusqu'ici dans ses relations diplomatiques, sans que le traité actuel puisse être cité comme exemple contraire aux usages établis.”<sup>2</sup>

§ 94. In March 1753, on the occasion of the settlement of prize claims under the declaration of July 8, 1748, between Great Britain, France and the States-General, the French commissioners proposed to return to the British a memorandum presented by them, on the ground of its being drawn up in the English language, and claimed a prescriptive right to have all transactions carried on in French. The British Government sent instructions to Paris, stating that out of complaisance they had at first usually accompanied the English *memoranda* (or memorials) with a French translation, but the French commissioners having found fault with its wording, the commissioners had been ordered to confine themselves in future to the English language ; the French commissioners having now, however, demanded the use of French as a right, to comply would be to establish a precedent ; and it was added :

“ All nations whatsoever have a right to treat with each other in a neutral language. As such, the French is made use of in transactions with the princes of the Empire and other foreign Powers, and if the Court of Versailles thinks fit to treat with His Majesty in Latin, the King will readily agree to it. . . . It is the King's express command that you should not for the future accept any paper from the French commissaries in their own language, unless they shall engage to receive the answer . . . returned to it in English.”

§ 95. In 1800 Lord Grenville introduced the practice of conducting his relations with foreign diplomatists accredited to the Court of St. James' in English instead of French, the language previously employed. Lord Castlereagh, when at the headquarters of the allied Powers in 1814-15, wrote in English to the foreign sovereigns and ministers. Canning, in 1823,

<sup>1</sup> Jenkinson, iii. 342.

<sup>2</sup> d'Angeberg, *Le Congrès de Vienne*, 1432.

discovered that the British representative at Lisbon was in the habit of writing in French to the minister for foreign affairs, although the latter addressed him in Portuguese ; he therefore instructed him to use English in future. In 1826 a controversy arose with the Prussian Government in consequence of Count Bernstorff's refusal to receive an English note from the British representative,<sup>1</sup> on the ground that it was the official rule to receive such communications only when written in French or German. The question remained in abeyance until 1831, when the British minister was instructed to use English in future. In 1851, the President of the German Diet having set up the pretension to receive translations of notes addressed to that body, Lord Palmerston instructed the British representative that in the opinion of Her Majesty's Government every government was entitled to use its own language in official communications, on the ground that it is more certain of expressing its meaning in its own language. He regarded as objectionable the practice of furnishing a translation, because it led to the translation being treated as an original in place of the English version.

Since that time the right of British diplomatic agents to use their own language for communications to the government to which they are accredited does not seem to have been further contested, the right claimed by Great Britain being recognised by her as appertaining to every other state.

§ 96. Sometimes, however, the use of one's own language may cause inconvenience, as is shown in an anecdote related to Dr. Busch by Count Bismarck <sup>2</sup> :

By the way, Keudell, he said suddenly, it just occurs to me that I must get a full power from the King to-morrow—in German of course. The German Emperor may only write in German, the Minister may be guided by circumstances. Official correspondence should be conducted in the language of the country and not in that of the foreign one. Bernstorff tried to carry out that idea here, but he went too far. He used to write to all diplomats in German, and they all replied—by arrangement of course—in their mother tongue, Russian, Spanish, Swedish, and what not, so that he had to keep a whole staff of translators at the Ministry. That was how I found things when I took office. Budberg sent me a note in Russian. That wouldn't do. If they wanted their revenge, Gortschakoff would have to write Russian to our Minister at Petersburg. That would be the correct course. It might be permissible to require foreign representatives to know and use the language of the country to which they are accredited. But to

<sup>1</sup> Stapleton, *Political Life of the Rt. Hon. George Canning*, iii. 265.

<sup>2</sup> *Graf Bismarck*, 4th ed. (1878), ii. 289.

reply in Russian to me in Berlin to a note in German was unreasonable. So I laid it down that anything received which was not in German, French, English or Italian should be left untouched and put away in the archives. Budberg then wrote complaint after complaint—always in Russian. No reply! The notes were put away in the presses. Finally he came himself and asked why I didn't reply. 'Reply?' I said in astonishment—'what to? I have seen nothing from you.' Now, he had written weeks before, and had sent several reminders. I told him, if I remember right, that a pile of documents in Russian were lying downstairs, and that his notes were probably among them; but that downstairs no one understood Russian, and anything in an undecipherable language was pigeon-holed. It was then agreed, if my memory serves, that Budberg would write in French, and the Foreign Ministry also occasionally. (*Translation.*)

§ 97. As regards treaties, conventions, etc., these, when concluded between two countries, are now ordinarily signed in two texts, *i.e.* in the respective languages of the two countries, though exceptions occur. In the case of treaties of a general nature—multilateral treaties—concluded between many states, the usual practice is to use French, but often French and English. Those concluded under the auspices of the League of Nations have both French and English texts, both equally authentic.

§ 98. When a government addresses a formal communication to another, it generally does so through its diplomatic agent accredited to the other state, and the correspondence in the matter thereafter continues as a rule through the same channel.

§ 99. Written official communications between a diplomatic agent and the minister for foreign affairs of the state to which he is accredited take as a rule one or other of three principal forms, of which examples are given below.

§ 100. NOTE.—This may be in the first or third person. The former is much the more usual; the latter is apt to be somewhat stiff in tone. Many instances of notes in the first person will be found in §§ 681–691.

On the occasion of the annexation of Bosnia and Herzegovina by Austria-Hungary in 1908, that government informed the other governments who were parties to the Treaty of Berlin, 1878, of the signature of a Protocol with the Turkish Government, and requested their assent to the abrogation of Article 25 of that treaty. The Powers, one after another, notified their consent. The note of the German ambassador was in the third person:

*(Translation.)*

The Imperial and Royal Austro-Hungarian Government having informed the Imperial German Government of the signature of the Protocol relating to Bosnia and Herzegovina, which has been concluded with the Sublime Porte, and having further requested assent to the abrogation of Article 25 of the Treaty of Berlin, the undersigned Imperial German ambassador, under instructions from his Government, has the honour to make known to His Excellency Baron von Aehrenthal, the Imperial and Royal Minister of the Imperial and Royal House and of Foreign Affairs, that the Imperial Government formally and without reserve gives its assent to the abrogation of Article 25 of the Treaty of Berlin.

The Undersigned, etc.

VON TSCHIRSCHKY.

Vienna, April 7, 1909.

HIS EXCELLENCY BARON VON AEHRENTHAL,  
etc., etc., etc.

The reply of the British ambassador was in the first person :

Vienna,

April 17, 1909.

MONSIEUR LE MINISTRE D'ÉTAT,

In reply to the communication which the Austro-Hungarian Ambassador in London made to Sir Edward Grey on the 3rd inst., I have the honour to inform Your Excellency that His Britannic Majesty's Government give their consent to the suppression of Article 25 of the Treaty of Berlin.

I avail, etc.,

FAIRFAX L. CARTWRIGHT.

It appears to have been the practice of the German and Austro-Hungarian Foreign Offices to address notes in the third person to foreign representatives.

§ 101. NOTE VERBALE.—This is in the third person and is neither addressed nor signed ; it should, however, terminate with a formula of courtesy. It is often used for the record of a conversation or in order to put a question.<sup>1</sup> Pasquier defined it thus :

“ C'est une expression usitée dans le langage diplomatique. Elle veut dire une pièce dont le contenu doit être pris en sérieuse considération, très importante, mais qui n'est pas destinée à être rendue publique. C'est comme on disait une importante déclaration faite de vive voix, puis recueillie sur le papier pour n'être pas oubliée.”

The mandates for Togoland accepted by Great Britain and France provided for the delimitation by a mixed commission

<sup>1</sup> García de la Vega, 209 ; de Martens-Geffken, iii. 3.

of the respective zones, as recorded in the agreement between the two governments of July 10, 1919. This having been completed, the French Ambassador at London addressed a *note verbale* to His Majesty's Secretary of State for Foreign Affairs :

“ Comme le sait son Excellence le Principal Secrétaire d'État de Sa Majesté Britannique aux Affaires étrangères, des conversations ont eu lieu entre l'Ambassade de Sa Majesté Britannique à Paris, les Ministères des Affaires étrangères et des Colonies, en vue de procéder à la délimitation des zones française et anglaise du mandat sur le Togo.

Une mission franco-anglaise ayant préparé un abornement définitif, dont le projet a été arrêté à Lomé par les Commissaires franco-anglais, un rapport commun fut établi ainsi que ses annexes (description de la frontière et jeu de cartes) en trois originaux dans chacune des langues française et anglaise et le tout signé à Lomé le 21 octobre 1929.

Deux de ces originaux ont dû être adressés à son Excellence le Principal Secrétaire d'État pour les Affaires étrangères, l'un pour être examiné par le Gouvernement de Sa Majesté Britannique et gardé dans ses archives, l'autre, afin d'être transmis au Conseil de la Société des Nations, lorsque les Gouvernements britannique et français se seront notifié leur accord respectif à la frontière proposée.

L'Ambassadeur de France a été prié par son Gouvernement de faire savoir à son Excellence le Principal Secrétaire d'État de Sa Majesté Britannique aux Affaires étrangères que M. Briand a reçu l'exemplaire qui lui était destiné, qu'il l'a soumis au Gouvernement de la République et que le projet de frontière ainsi tracée a obtenu son agrément.

L'abornement définitif sur les lieux ne devant être effectué que lorsque les deux Gouvernements se seront notifié leur mutuel accord, M. de Fleuriau serait très reconnaissant à Mr. Henderson de bien vouloir lui faire connaître le plus tôt possible l'adhésion du Gouvernement britannique. Il saisit, etc.

Ambassade de France, Londres,  
le 30 janvier 1930.”

The reply of the British Minister for Foreign Affairs was in the first person, and as the correspondence<sup>1</sup> furnishes an example of a joint note addressed by the French and British representatives to the Secretary General of the League of Nations, this also is given below :

Foreign Office,  
August 19, 1930.

YOUR EXCELLENCY,

On the 30th January last you were good enough to address to me a note stating that the French Government had given their

<sup>1</sup> *Treaty Series* No. 45 (1930).

approval to the boundary line defined in the report of the British and French Commissioners appointed to define the frontier between the British and French mandated territories in Togoland.

2. I am now in a position to inform your Excellency that His Majesty's Government in the United Kingdom have approved this report, and I have the honour to suggest that, if the French Government concur, steps should be taken to communicate to the Secretary-General of the League of Nations the third copy of the report, with the maps attached thereto, which was forwarded to London by the Governor of the Gold Coast. I beg leave accordingly to transmit herewith, for the consideration of the French Government, the draft of the note which I would propose to address to the Secretary-General and to request that I may be informed whether the French Government would agree to address a similar note to Sir Eric Drummond.

I have, etc.

Genève,  
le 23 Septembre 1930.

M. LE SECRÉTAIRE GÉNÉRAL,

Conformément aux instructions que nous avons reçues des Ministres des Affaires étrangères de nos Gouvernements respectifs, nous avons l'honneur de porter à votre connaissance que le Gouvernement français et le Gouvernement de Sa Majesté Britannique dans le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord ont approuvé par échange de notes le Rapport final en trois exemplaires, daté de Lomé, le 21 octobre 1929, présenté par la Commission mixte de Délimitation des Territoires du Togo placés sous le mandat des deux Hautes Parties Contractantes respectivement, en vertu de l'article 1<sup>er</sup> des mandats conférés par la Société des Nations à la date du 20 juillet 1922.

Le dépôt aux archives de la Société des Nations du troisième exemplaire original dudit Rapport final et des cartes y annexées s'effectue en même temps que celui de la présente note. Ces documents donnent la description exacte de la frontière telle qu'elle a été déterminée sur le terrain et portent les signatures des chefs de la mission.

Agréez, etc.

R. MASSIGLI.

ALEXANDER CADOGAN.

§ 102. MEMORANDUM (*mémoire, pro-memoriâ*).—This is often a detailed statement of facts, and of arguments based thereon, not differing essentially from a note, except that it does not begin and end with a formula of courtesy, need not be signed, but it may be convenient to deliver it by means of a short covering note. In earlier times these were often termed *déduction* or *exposé de motifs*.

Perhaps the most important instance of recent years is the

memorandum communicated by the German Government to the French Government on February 9, 1925, initiating the correspondence which led to the Locarno Conference of that year.<sup>1</sup>

(*Translation.*)

(Strictly Confidential.)

In considering the various forms which a pact of security might at present take, one could proceed from an idea cognate to that from which the proposal made in December 1922 by Dr. Cuno sprang. Germany could, for example, declare her acceptance of a pact by virtue of which the Powers interested in the Rhine—above all, England, France, Italy and Germany—entered into a solemn obligation for a lengthy period (to be eventually defined more specifically) *vis-à-vis* the Government of the United States of America as trustee not to wage war against a contracting State. A comprehensive arbitration treaty, such as has been concluded in recent years between different European countries, could be amalgamated with such a pact. Germany is also prepared to conclude analogous arbitration treaties providing for the peaceful settlement of juridical and political conflicts with all other States as well.

Furthermore, a pact expressly guaranteeing the present territorial status ("gegenwärtiger Besitzstand") on the Rhine would also be acceptable to Germany. The purport of such a pact could be, for instance, that the interested States bound themselves reciprocally to observe the inviolability of the present territorial status on the Rhine; that they furthermore, both jointly and individually ("conjointement et séparément"), guaranteed the fulfilment of this obligation; and, finally, that they would regard any action running counter to the said obligation as affecting them jointly and individually. In the same sense, the treaty States could guarantee in this pact the fulfilment of the obligation to demilitarise the Rhineland which Germany has undertaken in articles 42 and 43 of the Treaty of Versailles. Again, arbitration agreements of the kind defined above between Germany and all those States which were ready on their side to accept such agreements could be combined with such a pact.

To the examples set out above still other possibilities of solution could be linked. Furthermore, the ideas on which these examples are based could be combined in different ways. Again, it would be worth considering whether it would not be advisable so to draft the security pact that it would prepare the way for a world convention to include all States along the lines of the "Protocole pour le Règlement pacifique de Différends internationaux" drawn up by the League of Nations, and that, in case such a world convention was achieved, it could be absorbed by it or worked into it.

<sup>1</sup> *Parliamentary Paper, Misc., No. 7 (1925).*

The memorandum of the French Government in reply was as follows :

(*Translation.*)

The memorandum communicated to the French Government on the 9th February by His Excellency the German Ambassador has been examined by them with interest and with a determination not to neglect anything which may contribute to European and world peace. The German Government will understand that the examination of these suggestions cannot be continued until France has submitted them to her Allies and has come to an agreement with them for the establishment of a system of security within the framework of the Treaty of Versailles.

Paris,

February 20, 1925.

§ 103. Other and less usual forms are the following :

A method occasionally employed in some matter of weighty import is for the minister for foreign affairs to address a despatch to his representative at the other capital, setting forth the views of his government, with an instruction to read it to the Foreign Minister and to leave him a copy.

On the passage of the Panama Canal Act by the United States Congress in 1912 the following despatch was addressed by the British Government to His Majesty's Ambassador at Washington <sup>1</sup> :

Foreign Office,  
London,  
November 14, 1912.

SIR,

Your Excellency will remember that on the 8th July, 1912, Mr. Mitchell Innes communicated to the Secretary of State the objections which His Majesty's Government entertained to the legislation relating to the Panama Canal, which was then under discussion in Congress, and that on the 27th August, after the passing of the Panama Canal Act and the issue of the President's memorandum on signing it, he informed Dr. Knox that when His Majesty's Government had had time to consider fully the Act and the memorandum a further communication would be made to him.

Knowing as I do full well the interest which this great undertaking has aroused in the New World, and the emotion with which its opening is looked forward to by United States citizens, I wish to add before closing this despatch that it is only with great reluctance that His Majesty's Government have felt bound to raise objection on the ground of treaty rights to the provisions of the Act. Animated by an earnest desire to avoid points which might in any

<sup>1</sup> *Br. and For. State Papers*, cv. 366.

way prove embarrassing to the United States, His Majesty's Government have confined their objections within the narrowest possible limits, and have recognised in the fullest manner the rights of the United States to control the Canal. They feel convinced that they may look with confidence to the Government of the United States to ensure that, in promoting the interests of United States shipping, nothing will be done to impair the safeguards guaranteed to British shipping by treaty.

Your Excellency will read this despatch to the Secretary of State and will leave with him a copy.

I am, etc.,  
E. GREY.

§ 104. Formerly when this method of communicating the views of one government to another was resorted to, the copy of the despatch was sometimes withheld, a course which might be held to justify a refusal to listen to the reading of the despatch.

Canning, in January 1825, having recognised the independence of Buenos Aires, Colombia and Mexico, the Russian and Austrian ambassadors called upon him on successive days, and said they were instructed to read to him the despatches from their respective courts on the subject, but were absolutely prohibited from giving or allowing him to take copies. Canning asked them to give whatever they had to say to him the form of a *note verbale*, explaining the difficulty in which he would be placed when, after listening to the reading of a long despatch, it became his duty to lay before the King and to convey to his colleagues a faithful impression of its contents, with no other voucher than his own individual recollection of it. He therefore felt bound not to listen to the reading of the despatch without being allowed to take a copy of it, but was perfectly willing to receive any communication in a written form. However, after they had left, he noted down his understanding and impression of what they had said, and sent copies to them for their approval or correction. These were returned to him—that from the Russian ambassador considerably enlarged, and that from the Austrian ambassador with an alteration.

§ 105. COLLECTIVE NOTE. This is one addressed by the representatives of several states to a government in regard to some matter in which they have been instructed to make a joint representation. It involves close relations between the Powers whose representatives sign it.

The following notes addressed by the Italian, British and French representatives at Budapest to the Hungarian Government in 1921, concerning the deprivation of royal rights of all members of the House of Habsburg, are instances <sup>1</sup>:

<sup>1</sup> *Br. and For. State Papers*, cxvi. 513-17.

(1)

Budapest,  
le 4 novembre, 1921.

M. LE MINISTRE,

D'ordre de la Conférence des Ambassadeurs, nous avons l'honneur de transmettre au Gouvernement hongrois la déclaration suivante datée du 2 novembre :

“ La Conférence des Ambassadeurs a pris acte de la déclaration faite aux Commissaires alliés par le Gouvernement hongrois suivant laquelle il se remet entre les mains des Grandes Puissances alliées. Cette décision, en facilitant l'action que les Puissances alliées ne cessent d'exercer pour ramener l'apaisement dans l'Europe centrale, est de nature à écarter les dangers qui menacent la Hongrie.

“ Convaincue que l'exécution de ses décisions constitue la seule sauvegarde de la paix, la Conférence a, de même, pris acte de la déclaration suivant laquelle le Gouvernement hongrois proclame la déchéance de tous les membres de la maison des Habsbourg, déclaration dont elle attend que la confirmation soit remise par écrit et sans délai aux Commissaires alliés. Elle compte fermement que l'Assemblée nationale hongroise, comme le Gouvernement hongrois en a pris l'engagement, sanctionnera cette proclamation de déchéance avant le 8 novembre.

“ La Conférence charge les Commissaires alliés de veiller à la stricte exécution de cet engagement et décline toute responsabilité des événements qui pourraient survenir s'il n'était pas tenu dans le délai maximum susdit.”

Veuillez agréer, etc.,

CASTAGNETO. HOHLER. FOUCHET.

(2)

Budapest,  
le 5 novembre, 1921.

M. LE MINISTRE,

D'ordre de la Conférence des Ambassadeurs, nous avons l'honneur de signaler à votre Excellence que le texte du projet de loi gouvernementale, concernant la déchéance de la dynastie des Habsbourg, apparaît aux Grandes Puissances comme donnant prise à une équivoque qui ne leur permettra certainement pas d'obtenir la démobilisation de la Petite Entente. En effet, le projet de loi, tout en proclamant la déchéance de Charles IV, et l'abolition de la Pragmatique Sanction, réserve à la Hongrie le droit d'élire son roi, sans préciser que les Habsbourg, quels qu'ils soient, seront exclus de cette élection.

Il est indispensable que le vote de l'Assemblée nationale soit de plus grande netteté et, à cet égard, ne permette pas de supposer que la Hongrie se dérobe à la volonté très nettement marquée par les Puissances dans les déclarations de la Conférence des Ambassadeurs des 4 février, 1920, et 2 avril, 1921, en ce qui concerne l'exclusion du trône de tous les Habsbourg.

En portant sans délai ce qui précède à la connaissance de votre

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Excellence, nous croyons devoir appeler très vivement à ce sujet toute l'attention du Gouvernement hongrois.

Veuillez agréer, etc.,

CASTAGNETO. HOHLER. FOUCHET.

(3)

Budapest,  
le 12 novembre, 1921.

M. LE MINISTRE,

De la part de la Conférence des Ambassadeurs, nous avons l'honneur de transmettre à votre Excellence la communication suivante qui vient d'être adressée au Haut Commissaire de France :

"La Conférence se déclare satisfaite du texte de la déclaration complémentaire de la loi de déchéance qui vous a été remis par le Gouvernement hongrois, et que vous m'avez communiqué par votre télégramme du 6 novembre 1921.

"Elle est en effet d'accord avec vos propositions et elle estime que les assurances ainsi données par un acte international fournissent des garanties plus sérieuses qu'une loi qui pourrait être sujette à revision.

"Je vous prie en conséquence de vous concerter avec vos collègues britannique et italien, et, par une démarche conjointe, de faire savoir au Gouvernement hongrois que les Principales Puissances alliées prennent acte avec satisfaction de la déclaration visée ci-dessus qu'elles considèrent comme un engagement international."

En portant ce qui précède à la connaissance de votre Excellence, nous vous prions, M. le Ministre, d'agréer, etc.,

CASTAGNETO. HOHLER. FOUCHET.

§ 106. IDENTIC NOTES. These are not always exactly similar. It is, however, desirable that they should be worded as closely as possible and be identical *quant au fond*. They should be presented, as far as possible, simultaneously.

On February 4, 1897, a Greek force landed in Crete and proclaimed the occupation of the island in the name of the King of the Hellenes. The Powers intervened, and in concert drew up the terms of an identic note to be presented to the Greek Government by the representatives of Great Britain, Austria-Hungary, France, Germany, Italy and Russia. This was in the following terms <sup>1</sup> :

Athènes,  
le 2 mars, 1897.

M. LE MINISTRE,

J'ai reçu de mon Gouvernement l'ordre de porter à la connaissance de votre Excellence que les Grandes Puissances se sont entendues pour arrêter une ligne de conduite commune destinée à mettre fin à une situation qu'il n'a pas dépendu d'elles de prévenir, mais dont la prolongation serait de nature à compromettre gravement la paix de l'Europe.

<sup>1</sup> *Br. and For. State Papers*, xci. 175.

A cet effet les gouvernements d'Allemagne, d'Autriche-Hongrie, de France, de la Grande-Bretagne, d'Italie et de Russie sont tombés d'accord sur les deux points suivants :

1. La Crète ne pourra en aucun cas, dans les conjonctions actuelles, être annexée à la Grèce ;

2. Vu les retards apportés par la Turquie dans l'application des réformes arrêtées de concert avec elles et qui n'en permettent plus l'adaptation à un état de choses transformé, les Puissances sont résolues, tout en maintenant l'intégrité de l'Empire Ottoman, à doter la Crète d'un régime autonome absolument effectif et destiné à lui assurer un gouvernement séparé sous la haute suzeraineté du Sultan.

La réalisation de ces vues ne saurait, dans la conviction des Cabinets, s'obtenir que par le retrait des navires et des troupes helléniques qui sont actuellement dans les eaux ou sur le territoire de l'île occupée par les Puissances. Aussi attendons-nous avec confiance cette détermination de la sagesse du Gouvernement de Sa Majesté, qui ne voudra pas persister dans une voie contraire à la résolution des Puissances, décidées à poursuivre un prompt apaisement aussi indispensable à la Crète qu'au maintien de la paix générale.

Je ne dissimulerai pas toutefois à votre Excellence que mes instructions me prescrivent de vous prévenir qu'en cas de refus du Gouvernement Royal les Grandes Puissances sont irrévocablement déterminées à ne reculer devant aucun moyen de contrainte si, à l'expiration d'un délai de six jours, le rappel des navires et des troupes helléniques de Crète n'était pas effectué.

§ 107. The formal parts of a note are—to give them their customary French designations—(1) *l'appel* or *inscription* ; (2) *le traitement* ; (3) *la courtoisie* ; (4) *la souscription* ; (5) *la date* ; (6) *la réclame* ; (7) *la suscription*.

(1) is the title of the person addressed, as *Sire* (to a sovereign), *Monseigneur*, *Monsieur le Ministre*, *Monsieur le Comte*, or simply *Monsieur* (Sir) if he is a commoner, bearing no title.

It is placed *en vedette*, *i.e.* apart from the body of the letter ; *en ligne*, *i.e.* at the beginning of the first line ; or *dans la ligne*, *i.e.* after some words at the beginning of the letter. *En vedette* is used in ordinary correspondence. When the head of a state writes to another head of a state, the *appel* or *inscription* is usually *en ligne* ; if he is addressing a non-sovereign prince, or other important personage, the *appel* is often *dans la ligne*.

(2) *Traitement* is mentioning the person addressed by his title of courtesy, such as *Sainteté* (Holiness) to the Pope, *Majesté* (Majesty) to kings and emperors ; *altesse impériale* (Imperial Highness) ; *altesse royale* (Royal Highness) ; *altesse sérénissime*

(Serene Highness) ; *altesse* (Highness) ; *excellence* (Excellency) ; *seigneurie excellentissime, seigneurie illustrissime, grandeur, éminence* (Eminence).<sup>1</sup>

(3) The *courtoisie* is the complimentary phrase which concludes the letter. It may express an assurance of respect, consideration, attachment, gratitude, etc.

(4) The *souscription* is the signature. When preceded by "votre obéissant serviteur" it is said to be written *en dépêche* ; if by "veuillez agréer les assurances de ma haute considération," or by some similar form of words, it is said to be written *en billet*. The former is used in circumstances of ceremony, the latter in ordinary correspondence.

(5) The *date* (Latin *data*, i.e. given) gives the time and place of writing.

(6) The *réclame* consists of the name and official designation of the person addressed. It is placed at the bottom of the first page on the left.

*Suscription* is the address, and is a reproduction on the envelope of the *réclame*.

#### § 108. *French usage since 1920.*

To foreign Ambassadors :

*Appel (en vedette)* : "Monsieur l'Ambassadeur."

*Traitement* : "Votre Excellence."

*Courtoisie* : "Veuillez agréer, Monsieur l'Ambassadeur, les assurances de ma très haute considération."

*Date* : "A Paris, le....., 19.."

*Réclame* : "Son Excellence Monsieur.....ou  
Monsieur le.....(titre nobiliaire, s'il y a lieu),  
Ambassadeur de....."

To foreign Envoys Extraordinary and Ministers Plenipotentiary.

*Date* : "Paris, le....., 19.."

*Appel (en vedette)* : "Monsieur le Ministre, ou Monsieur  
le.....(titre nobiliaire s'il y a lieu)."

*Traitement* : "Vous."

*Courtoisie* : "Agréé, Monsieur le Ministre, ou Monsieur  
le.....(titre nobiliaire s'il y a lieu), les assurances  
de ma haute considération."

*Réclame* : "Monsieur.....ou Monsieur le.....  
.....(titre nobiliaire, s'il y a lieu) et Ministre  
de....."

<sup>1</sup> *Éminence* is said to have been invented by Cardinal Richelieu for himself. It was afterwards adopted by the other cardinals, and became generally recognised.

To foreign Ministers Resident :

The same as the foregoing, except that the *appel* is written *en ligne*.

To foreign Chargés d'Affaires :

*Date* : " Paris, le....., 19.. "

*Appel (en ligne)* : " Monsieur le Chargé d'Affaires  
.....vous..... "

*Traitement* : " Vous. "

*Courtoisie* : " Agréez, Monsieur le Chargé d'Affaires  
.....les assurances de ma considération la plus distinguée. "

*Réclame* : " Monsieur..... ou Monsieur le.....  
(titre nobiliaire s'il y a lieu), Chargé d'Affaires de  
..... "

§ 109. Other rules of the French Foreign Office are :

Letters addressed by the Minister for Foreign Affairs to the representatives of foreign Powers accredited to the French Republic are written on large paper with printed heading.

The Agents of the Ministry for Foreign Affairs, in their correspondence with the authorities of the foreign country where they exercise their functions, must follow the forms and the rules laid down by the head of the mission, in accordance with local usages.

*Notes verbales* destined for foreign representatives accredited at Paris are written on large paper with printed heading, and *réclame*, but without *appel* ; the date is written at the end.

*Notes pro-memoriâ*, destined for foreign representatives accredited at Paris, are written on square paper, with printed heading. These have neither *appel* nor *réclame*, and, as they are to be delivered from one person to another, they do not require a *courtoisie*. The date is written at the end.

Abbreviations such as " S.M." for " Sa Majesté," " S.A." for " Son Altesse," " S.A.S." for " Son Altesse Sérénissime," " S. Exc." for " Son Excellence," " S.E." for " Son Éminence," " Mgr." for " Monseigneur," " M." for " Monsieur," " Mme." for " Madame," etc., are only allowable if the name or title of the person follows immediately, and if the document is not destined for that person. Where both these conditions are present the use of the abbreviation is imperative. Thus " Dans votre entretien avec S. Exc. l'Ambassadeur de..... vous.....," but " Veuillez faire observer à Son Excellence que.....," or " Le Ministre des Affaires Etrangères présente ses compliments à Son Excellence l'Ambassadeur de.....et a l'honneur de Lui rappeler que......"

The expressions "Votre Majesté," "Votre Altesse," "Votre Altesse Sérénissime," "Votre Excellence," "Prince," "Princesse," "Madame," "Mademoiselle," heraldic titles, and the words "Gouvernement," "Département," "Administration," etc., may never be abbreviated.

Forms used in addressing Sovereigns and Heads of Foreign States :

*Appel (en vedette)* : "Sire" or "Madame," or "Monsieur le Président."

*Traitement* : "Votre Majesté" or "Votre Excellence."

*Courtoisie* : "Je prie Votre Majesté, ou Votre Excellence, d'agréer les assurances<sup>1</sup> de mon profond respect."

*Date* : "A Paris, le....., 19.."

To Princes and Princesses of Sovereign Families and reigning Princes and Princesses :

*Appel (en vedette)* : "Monseigneur" or "Madame."

*Traitement* : "Votre Altesse (Impériale, Royale, Sérénissime)."

*Courtoisie* : "Je prie Votre Altesse (Impériale, Royale, Sérénissime) d'agréer les assurances<sup>2</sup> de ma respectueuse considération."

*Date* : "A Paris le....., 19.."

*Réclame* : "Son Altesse (Impériale, Royale, Sérénissime) Monseigneur le Prince X..... ou Madame la Princesse X....."

To Foreign Cabinet Ministers :

*Appel (en vedette)* : "Monsieur le Ministre ou Monsieur le.....(titre nobiliaire s'il y a lieu)."

*Traitement* : "Votre Excellence."

*Courtoisie* : "Veuillez agréer, Monsieur le Ministre ou Monsieur le.....(titre nobiliaire s'il y a lieu), les assurances de ma très haute (ou haute) considération."

*Date* : "A Paris, le....., 19.."

*Réclame* : "A Son Excellence Monsieur le Ministre ou Monsieur le.....(titre nobiliaire s'il y a lieu), Ministre de....."

The French Chancery may be safely taken by other chanceries as a model in matters of etiquette, and for that reason we have not hesitated to give these details.

### § 110. British usage.

In all official communications, foreign ambassadors accredited in London are addressed as "Your Excellency"; other

<sup>1</sup> For a sovereign, "l'hommage."

<sup>2</sup> For a princess, "l'hommage de mon respect."

correspondents as "My Lord," "Sir," or "Gentlemen," as the case may be.

The following terminations of notes, despatches and letters are prescribed :

To foreign Ambassadors in London :

I have the honour to be, with the highest consideration,  
Your Excellency's obedient servant.

To foreign Ministers :

I have the honour to be, with the highest consideration,  
Sir,  
Your obedient Servant.

To foreign Chargés d'affaires :

I have the honour to be, with high consideration,  
Sir,  
Your obedient Servant.

To His Majesty's Ambassadors abroad :

I am, with great truth and respect,  
Sir (or, My Lord),  
Your obedient Servant.

To His Majesty's Ministers abroad :

I am, with great truth and regard,  
Sir (or, My Lord),  
Your obedient Servant.

To His Majesty's Chargés d'affaires abroad :

I am, with great truth,  
Sir,  
Your obedient Servant.

To the Law Officers of the Crown :

I have the honour to be,  
Gentlemen,  
Your obedient Servant.

To other correspondents :

I am,  
Sir (Gentlemen, My Lord),  
Your obedient Servant.

§ 111. Letters addressed by the British ambassador at Paris to foreign ambassadors and ministers usually terminate : "Veuillez agréer, Monsieur....., l'assurance de ma très haute considération" ; and to chargés d'affaires : "Veuillez agréer, Monsieur....., l'assurance de ma haute considération."

§ 112. How sovereigns address each other in correspondence has been explained in § 68. The ceremonial observed is less strict than in the case of communications addressed to others ; between equals the style is more familiar and less formal ; for this reason the form designated in French *Lettres de Cabinet* is that used by preference for communications between sovereigns.

Such letters (written usually on quarto paper) begin, Monsieur Mon Frère (et cher Beau-Frère), Sir My Brother (and dear Brother-in-Law) ; Madame Ma Sœur (et chère Nièce), Madame My Sister (and dear Niece) ; Monsieur Mon Cousin (Sir My Cousin) ; etc.

In the body of the letter the sovereign speaks of himself in the singular, and gives to his equals the title of *Majesté, Altesse Royale*, etc. Princes of lesser rank speak of crowned heads as *Sire*, both in the body of the letter and its signature.

Some friendly expressions, which vary according to the relations or degree of relationship between the two sovereigns, close the letter, such as " Je saisis cette occasion pour Vous offrir les assurances de la haute considération et de l'invariable attachement avec lesquelles Je suis, Monsieur Mon Frère, de Votre Majesté le bon Frère, N."

The signature of the sovereign to such letters is in some countries countersigned by a minister of state. Letters in this form are customarily employed for credentials of ambassadors or ministers, or letters announcing their recall, and recredentials, and in general for announcements of births, marriages, or deaths in the Royal Family, or expressions of congratulation or condolence conveyed to other sovereigns.

§ 113. Letters addressed by sovereigns to presidents of republics are in the more formal and ceremonious style of *Lettres de Chancellerie* (on large paper) beginning with the name and title of the sovereign, followed by the title of the head of the state to whom the letter is addressed : " To the President of the Republic of . . . . . Our Good Friend " (or some equivalent). These are ordinarily credentials of ambassadors or ministers, letters of recall, recredentials, announcements of the death of the late sovereign or of accession to the throne, congratulations on election, etc., and may end by an expression of the value attached by the sovereign to the maintenance of the friendly relations happily subsisting between the two countries. They are usually countersigned by a minister of state.

§ 114. Letters addressed by the sovereign to other sovereigns are sometimes in similar formal style to *Lettres de Chancellerie*,

with the designation of the sovereign to whom they are addressed following the name and title of the sender.

§ 115. Letters addressed by presidents of republics to sovereigns usually begin: "A.B. President of the Republic of.....To His Majesty the King of..... Great and Good Friend (or some equivalent)." These may be credentials of ambassadors or ministers, letters of recall, recredentials, announcement of election to the presidency, etc. In the case of many republics such announcements of assumption of the office of president are customary.

§ 116. In 1913 the Austro-Hungarian Chancery still used Latin for Imperial and Royal letters:

Serenissime et potentissime Princeps, Consanguinee et Frater carissime. . . .

Maiestatis Vestrae Bonus Frater  
Franciscus Josephus.

Dabantur Viennae, die . . . mensis. . . .

## CHAPTER VIII

### CREDENTIALS AND FULL POWERS

#### *Letters of Credence or Credentials*

§ 117. THE form of credentials used in Great Britain in the case of foreign sovereigns is that of a *Lettre de Cabinet*, as, for example :

SIR MY BROTHER,

Being desirous to maintain without interruption the relations of friendship and good understanding which happily subsist between the two Crowns, I have made choice of Sir Augustus Berkeley Paget, a member of My Privy Council, and Knight Grand Cross of My Most Honourable Order of the Bath, to reside at the Court of Your Imperial Majesty in the character of My Ambassador Extraordinary and Plenipotentiary.

The long experience which I have had of Sir Augustus Paget's talents and zeal for My service assures Me that the selection which I have made will be perfectly agreeable to Your Imperial Majesty, and that he will discharge the important duties of his Embassy in such a manner as to prove himself worthy of this new mark of My confidence, and to merit Your Imperial Majesty's approbation and esteem.

I therefore request that Your Imperial Majesty will give entire credence to all that Sir Augustus Paget shall communicate to You in My name, more especially when he shall assure Your Imperial Majesty of My invariable esteem and regard, and shall renew to You the expression of those sentiments of sincere attachment and highest consideration with which I am, Sir My Brother,

Your Imperial Majesty's

Good Sister,

VICTORIA, R. ET I.

Osborne,

January 1, 1884.

To My Good Brother the Emperor of Austria.

§ 118. Or, in the case of a republic, a *Lettre de Chancellerie*, as, for example :

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, Empress of India, etc., etc., etc.

To the President of the United States of Venezuela, Sendeth Greeting.

Our Good Friend. Being desirous to continue without interruption the relations of friendship and good understanding which happily subsist between Great Britain and the United States of Venezuela, and having the fullest confidence in the fidelity, prudence and other good qualities of Our trusty and well-beloved Frederick Robert St. John, Esquire, We have thought proper to accredit him to the United States of Venezuela in the character of Our Minister Resident. We doubt not that he will merit your approbation and goodwill by a strict observance of the instructions he has received from Us to evince to you Our constant friendship, and the sincere desire which We entertain to preserve and advance on all occasions the interest and happiness of both nations. We therefore request that you will grant a favourable reception to Our said Minister Resident, and that you will give entire credence to all that he shall represent to you in Our name, especially when, in obedience to Our orders, he shall assure you of Our esteem and regard, and of Our hearty wishes for the welfare and prosperity of the United States of Venezuela.

And so We recommend you to the Protection of the Almighty.

Given at Our Court at Osborne, the 24th day of December, in the Year of Our Lord 1884, and in the forty-eighth year of Our Reign.

Your Good Friend,

VICTORIA, R. ET I.

(Countersigned) GRANVILLE.

§ 119. Or, again in the case of certain Oriental monarchs, a *Lettre de Chancellerie*, as, for example :

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, Empress of India, etc.

To the Most High, Mighty and Glorious Prince, His Imperial and Royal Majesty the Emperor of China, Our Good Brother and Cousin, Greeting.

Most High and Mighty Prince. Having granted permission to Our Trusty and Well-beloved Sir Thomas Francis Wade, Knight Commander of Our Most Honourable Order of the Bath, who has for some years resided at the Court of Your Imperial and Royal Majesty in the character of Our Envoy Extraordinary and Minister Plenipotentiary, to resign his Mission and remain in England, We cannot omit to notify to You that his functions in that capacity have terminated, and that he will not return to Your Court. Being, however, desirous to maintain without interruption the relations of friendship and good understanding which happily exist between Our respective Empires, and to promote and extend the commercial intercourse between Our subjects and Dominions and those of Your Imperial and Royal Majesty, We have selected Our Trusty and Well-beloved Sir Harry Smith Parkes, Grand

Cross of Our Most Distinguished Order of St. Michael and St. George, Knight Commander of Our Most Honourable Order of the Bath, in whose zeal, talents, and discretion We have the most perfect confidence, to reside at the Court of Your Imperial and Royal Majesty in the character of Our Envoy Extraordinary and Minister Plenipotentiary. Sir Harry Smith Parkes will have the honour of presenting this Our Royal Letter to Your Imperial and Royal Majesty, and will, in obedience to Our orders, assure You of Our Most sincere friendship, and of Our ardent wishes for Your long life and uninterrupted happiness. He is fully informed as to all matters which concern the interests of Our subjects trading to or residing in the Dominions of Your Imperial and Royal Majesty, and will use his best efforts to perpetuate that harmony and friendly intercourse which it is Our earnest desire should ever prevail between the two great Empires. We accordingly request that Your Imperial and Royal Majesty will receive Our said Envoy Extraordinary and Minister Plenipotentiary in a favourable manner, that You will grant him free access to Your Presence, and that You will give entire credence to all that he shall have occasion to represent to You in Our Name.

And so We recommend Your Imperial and Royal Majesty to the Protection of The Almighty.

Given at Our Court at Windsor Castle, the first day of July, in the Year of Our Lord 1883, and in the forty-seventh Year of Our Reign.

Your Imperial and Royal Majesty's

Affectionate Sister and Cousin,

VICTORIA R. ET I.

(Countersigned) GRANVILLE.

To the Most High, Mighty  
and Glorious Prince, His  
Imperial and Royal Majesty  
The Emperor of China, Our  
Good Brother and Cousin.

§ 120. The language of such documents is a matter of "common form." The highly ornate phraseology of the past has in modern times given way to a more simple style of address, and while this may differ from reign to reign, and between one country and another, the final phrase asking that credit may be given to all that the agent may say in the name of his sovereign or government is of universal application, as being what constitutes the essential part of a letter of credence.

### *Letters of Recall*

§ 121. Letters of Recall may take the form of a *Lettre de Cabinet*, as, for example :

MADAME MA SŒUR,

Des motifs de santé ayant porté le Lieutenant Général de Bulow à désirer de rentrer en Danemark, j'ai cru devoir accéder à

ses vœux en mettant un terme à la mission qu'il remplissait comme Mon Envoyé Extraordinaire et Ministre Plénipotentiaire auprès de Votre Majesté. J'aime à croire que cet Envoyé, qui a rempli cette mission honorable à Mon entière satisfaction, aura su mériter la haute bienveillance de Votre Majesté, et J'espère qu'Elle lui permettra de Lui témoigner en personne la reconnaissance dont il est pénétré pour les marques de bonté dont Votre Majesté a bien voulu l'honorer pendant le séjour qu'il a fait auprès d'Elle. Je profite Moi-même avec plaisir de cette occasion pour renouveler à Votre Majesté l'expression de la haute considération et de la plus parfaite amitié avec lesquelles Je suis,

Madame Ma Sœur,  
de Votre Majesté,  
le bon Frère,  
CHRISTIAN R.

Copenhague,  
le 11 Mai 1880.

A Sa Majesté la Reine du  
Royaume-Uni de la Grande-  
Bretagne et d'Irlande, Im-  
pératrice des Indes.

§ 122. Or of a *Lettre de Chancellerie* :

Par la Grâce de Dieu,

Nous Alexandre III, Empereur et Autocrate de Toutes les Russies, de Moscou, Kiow, Wladimir, Novgorod, Tsar de Casan, Tsar d'Astrakhan, Tsar de Pologne, Tsar de Sibérie, Tsar de la Chersonese, Taurique, Tsar de la Géorgie, Seigneur de Plescow et Grand Duc de Smolensk, de Lithuanie, Volhynie, Podolie et de la Finlande ; Duc d'Estonie, de Livonie, de Courlande et Semigalle, de Samogitie, Bialostock, Carelie, Twer, Jugotie, Perm, Viatka, Bolgarie et d'autres ; Seigneur et Grand Duc de Novgorod-inférieur, de Czarnigow, Riasan, Polotzk, Rostow, Jaroslaw, Beloozersk, Oudor, Obdor-Condie, Witepsk, Mstislaw ; Dominateur de toute la contrée du Nord ; Seigneur d'Iberie, de la Cartalinie, de la Cabardie et de la province d'Arménie ; Prince Héritaire et Souverain des Princes de Circassie et d'autres Princes montagnards ; Seigneur de Turkestan ; Successeur de Norvège, Duc de Schleswig-Holstein, de Stormarn, de Dithmarsen et d'Oldenbourg, etc., etc., etc.

A la Très-Haute et Très-Puissante Princesse Victoire 1<sup>re</sup>, par la Grâce de Dieu, Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes, etc. Salut !

Très-Haute et Très-Puissante Reine, très-chère Sœur et très-aimée parente ! Nous avons jugé à propos de rappeler Notre Conseiller Privé et Chevalier Baron Arthur Mohrenheim du poste de Notre Ambassadeur Extraordinaire et Plénipotentiaire qu'il a occupé jusqu'ici près Votre Majesté. En informant Votre Majesté de cette détermination, Nous La prions de vouloir bien congédier gracieusement Notre susdit Ambassadeur, étant persuadé, qu'en se conformant dans l'exercice des ses fonctions aux instructions

que Nous lui avons données, il aura déployé tout son zèle pour entretenir les liens d'amitié qui subsistent entre Nos deux Cours, et aura su mériter la bienveillance de Votre Majesté. Sur ce, Nous prions Dieu qu'Il ait Votre Majesté en Sa sainte et digne garde.

Donné à St. Pétersbourg, le 8 février, 1884, de Notre Règne la troisième année.

De Votre Majesté l'affectionné Frère et Cousin,

ALEXANDRE.

(Countersigned) N. GIERS.

A Sa Majesté la Reine du  
Royaume-Uni de la Grande-  
Bretagne et d'Irlande, Im-  
pératrice des Indes.

§ 123. Or, when addressed to a Republic :

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, Empress of India, etc., etc., etc.

To the President of the United States of America, Sendeth Greeting ! Our Good Friend !

Having need elsewhere for the services of Our Right Trusty and Well-beloved Councillor Sir Edward Thornton, Knight Commander of Our Most Honourable Order of the Bath, who has for some time resided with You in the character of Our Envoy Extraordinary and Minister Plenipotentiary, We have thought proper to notify to You his recall. We are Ourselves so entirely satisfied with the zeal, ability and discretion with which Sir Edward Thornton has uniformly executed Our orders during his mission, by studying to promote the friendship and good understanding which happily subsist between the two Nations, and which We trust will always continue, that We cannot doubt that You will also have found his conduct deserving of Your approbation.

We gladly embrace this opportunity to assure You of the sincere interest which We take in the welfare and prosperity of the United States. And so We recommend You to the Protection of The Almighty.

Given at Our Court at Balmoral the 25th day of May, in the Year of Our Lord 1881, and in the 44th Year of Our Reign.

Your Good Friend,

VICTORIA, R. ET I.

(Countersigned) GRANVILLE.

To Our Good Friend,  
The President of the United  
States of America.

§ 124. Or, when issued by a Republic :

Jules Grévy,  
Président de la République Française.

A Sa Majesté la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes.

TRÈS CHÈRE ET GRANDE AMIE,

Ayant jugé à propos d'accéder au désir que Nous a exprimé M. Charles Tissot de revenir en France, Nous avons mis fin à la haute mission qu'il remplissait auprès de Votre Majesté en qualité d'Ambassadeur de la République Française. Nous ne doutons pas que, pendant la durée de sa charge, M. Tissot n'ait profité de toutes les occasions qui se sont présentées pour exprimer à Votre Majesté la gratitude que lui ont inspirée les marques de bonté dont Vous avez bien voulu l'honorer, et que, suivant Notre recommandation, il Vous ait renouvelé les assurances de Notre haute estime et de Notre inviolable amitié, ainsi que celles des vœux que Nous formons pour la prospérité du Royaume-Uni.

Écrit à Paris le 19 juillet, 1883.

JULES GRÉVY.

(Countersigned) CHALLEMEL LECOUR.

### *Recredentials*

§ 125. Recredential (*récréance, recréditif*) is the name given to the reply to a letter of recall. The following are examples :

MADAME MA SŒUR ET CHÈRE COUSINE,

J'ai reçu la lettre par laquelle Votre Majesté Royale et Impériale a bien voulu M'informer qu'Elle avait jugé à propos d'utiliser ailleurs les services de Sir Edward Baldwin Malet, Commandeur de Son très-honorable ordre du Bain, chargé pendant quelque temps d'une mission à Ma Cour en qualité d'Envoyé Extraordinaire et Ministre Plénipotentiaire. Je saisis avec empressement l'occasion qui M'est offerte pour exprimer à Votre Majesté Royale et Impériale combien J'ai eu lieu d'être satisfait de la manière dont Sir Edward Baldwin Malet a constamment exécuté ses ordres dans l'exercice des hautes fonctions qui l'ont retenu auprès de Ma Personne. Comme il n'a cessé à consacrer ses efforts au développement des rapports d'amitié qui existent si heureusement entre Nos deux Couronnes, il s'est montré digne de toute Ma bienveillance, et J'ose à ce titre le recommander particulièrement aux bonnes grâces de Votre Majesté Royale et Impériale. En exprimant à Votre Majesté Royale et Impériale le plaisir que Me font éprouver les témoignages d'amitié qu'Elle Me donne, Je La prie de recevoir l'expression renouvelée de la haute estime et de l'inviolable attachement avec lesquels Je suis, Madame Ma Sœur et Chère Cousine,

de Votre Majesté Royale et Impériale

le bon Frère et Cousin,

LÉOPOLD.

Bruxelles,

le 19 octobre 1884.

Sa Majesté la Reine du  
Royaume-Uni de la Grande-  
Bretagne et d'Irlande, Im-  
pératrice des Indes.

## § 126.

MADAME,

Par lettres royales, datées du Château de Windsor, le 1<sup>er</sup> juillet, Votre Majesté nous a fait l'honneur de nous informer qu'Elle avait jugé à propos de rappeler de sa mission auprès de nous Son Excellence Monsieur Hussey Crespigny Vivian, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près la Confédération Suisse.

Nous ne Vous dissimulerons pas le regret que nous éprouvons du départ de l'honorable Monsieur Vivian, qui a su s'attirer toutes nos sympathies par la bienveillance et l'aménité qu'il a toujours mises dans ses relations avec nous et reserrer encore davantage les liens d'estime et de bonne amitié qui unissent la Suisse et la Grande-Bretagne.

Nous saisissons avec plaisir cette occasion pour renouveler à Votre Majesté les vœux que nous formons pour la prospérité de Sa famille et pour le bonheur des peuples qui sont réunis sous Son sceptre et pour La recommander avec nous à la protection du Tout-Puissant.

Berne,

le 19 juillet 1881.

Au nom du Conseil fédéral suisse,

Le Vice-Président,

BAVIER.

Le Chancelier de la Confédération, X.

## § 127.

Victoria by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, Empress of India, etc., etc., etc.,

To His Majesty Somdetch Phra Paramindr Maha Chulalonkorn Phra Chula Chom Klao, King of Siam, Our Distinguished and Beloved Friend, Sendeth Greeting.

We have received from the hands of His Highness Prince Prisdang, Your Majesty's Envoy Extraordinary and Minister Plenipotentiary at Our Court, the letter which You addressed to Us on the 16th of July last, and in which You acquaint Us that You had found it desirable to terminate his functions in that character. The mission of Prince Prisdang being thus at an end, We cannot omit to assure You that His Highness's language and conduct during his residence at Our Court have been such as to merit Our entire approbation and esteem and to strengthen and maintain those friendly relations which happily subsist between Our Dominions and those of Your Majesty, to the continuance of which We attach a high value. And so We recommend You to the Protection of the Almighty.

Given at Our Court at Windsor Castle, the 17th day of

December, in the Year of Our Lord 1883, and in the forty-seventh year of Our Reign.

Your Majesty's Affectionate Sister and Friend,

VICTORIA, R. ET I.

(Countersigned) GRANVILLE.

To His Majesty The King of  
Siam, Our Distinguished and  
Beloved Friend.

*Full Powers*

§ 128. These are in the form of letters patent.

A diplomatic agent to whom a particular negotiation is entrusted for the conclusion of a treaty or convention, or an agent who is deputed to take part in a congress or conference for a similar purpose, requires as a general rule a special authorisation, called a full power, from the head of the state whom he represents ; or, it may be, from its government, if the proposed treaty arrangement is to be between governments.

§ 129. Before the signature of a treaty or convention, etc., it is the rule that the full powers of the plenipotentiaries must be exhibited for verification. In the case of a bilateral treaty this usually takes place at the ministry for foreign affairs prior to the signature of the treaty ; in the case of a multilateral treaty, the duty automatically devolves upon the headquarters government, viz. that of the state wherein the treaty is signed ; in the case of a conference a small sub-committee is often appointed at the outset to receive and examine the full powers of the representatives of the various states taking part.

§ 130. It is not, however, necessary that an actual exchange or transference of the original documents should take place. An inspection will suffice, and the most that could be required would be the retention of certified copies. That this was the custom in former times is shown from the practice that prevailed of publishing the text of the full powers conferred by the high contracting parties along with the treaty negotiated in pursuance of them.<sup>1</sup> But sometimes full powers, where given *ad hoc*, having served the purpose for which they were intended, are left with the government of the state wherein signature of the treaty take place, and in this event they are preserved in its archives with the signed treaty.

§ 131. Formerly, when a congress was held under the superintendence of one or more mediators, the full powers of the plenipotentiaries were handed to them for verification. At the conferences of Constantinople (1876-7) and Berlin (1884) the plenipotentiaries appointed *ad hoc* alone produced full

<sup>1</sup> See Jenkinson, iii. 347.

powers, which were held to be unnecessary in the case of the resident diplomatic agents who represented their governments on those occasions.

§ 132. In the eighteenth century the King of Great Britain and the Emperor conferred full powers in the Latin language ; France and Russia used French, Spain Spanish, and the United States English. For the definitive Treaty of Peace with the United States of September 3, 1783, the King's full power was also in English. Latin was used for this purpose as late at least as 1806, for the full powers given first to Lord Yarmouth, and afterwards to Lord Lauderdale in conjunction with him, for the abortive peace negotiations at Lille.

§ 133. Full power, dated April 23, 1783, to the Duke of Manchester for negotiating a treaty of peace with France :

*(Signature)* Georgius R.

Georgius Tertius, Dei Gratiâ, Magnæ Britanniaë, Franciaë, et Hiberniaë, Rex, Fidei Defensor, Dux Brunsvicensis et Luneburgensis, Sacri Romani Imperii Archi-Thesaurarius, et Princeps Elector, etc. Omnibus et singulis ad quos præsentēs hæ literæ pervenerint, salutem ! Cùm ad pacem perficiendam inter nos et bonum fratrem nostrum Regem Christianissimum, quæ jam signatis apud Versalios, die vicesimo mensis Januarii proximè præteriti, articulis preliminariis feliciter inchoata est, eamque ad finem exoptatum perducendam, virum aliquem idoneum, ex nostrâ parte, plenâ auctoritate munire nobis è re visum sit ; cùmque perdilectus nobis et perquam fidelis consanguineus et consiliarius noster, Georgius Dux et Comes de Manchester, Vicecomes de Mandeville, Baron de Kimbolton, Comitatus de Huntingdon Locum-Tenens et Custos Rotulorum, nobilitate generis, egregiis animi dotibus, summo rerum usu, et spectatâ fide, se nobis commendaverit, quem idcirco titulo Legati Nostri Extraordinarii et Plenipotentiarîi apud prædictum bonum fratrem nostrum Regem Christianissimum decoravimus, persuasumque nobis sit amplissimè ornaturum fore provinciam quam ei mandare decrevimus : Sciatis igitur quòd nos prædictum Georgium Ducem de Manchester fecimus, constituimus et ordinavimus, et, per præsentēs, eum facimus, constituimus et ordinamus, nostrum verum certum ac indubitatum plenipotentiarium, commissarium, et procuratorem ; dantes et concedentes eidem plenam et omnimodam potestatem, atque auctoritatem, pariter ac mandatum generale ac speciale, cum prædicto Rege Christianissimo, ipsiusque ministris, commissariis vel procuratoribus, sufficienti auctoritate instructis, cumque legatis, commissariis, deputatis et plenipotentiarîis aliorum principum et statuum, quorum interesse poterit, sufficienti itidem auctoritate instructis tam singulatim ac divisim, quam aggregatim ac conjunctim, congregiendi et colloquendi, atque cum ipsis de pace firmâ ac stabili, sincerâque amicitia et concordia quantocius

restituendis, conveniendi, tractandi, consulendi et concludendi ; eaque omnia, quæ ita conventa et conclusa fuerint, pro nobis et nostro nomine, subsignandi, superque conclusis tractatum, tractatusve, vel alia instrumenta quotquot et qualia necessaria fuerint, conficiendi, mutuoque tradendi, recipiendique ; omniaque alia quæ ad opus supradictum feliciter exequendum pertinent, transigendi, tam amplis modo et formâ, ac vi effectusque pari, ac nos, si interessemus, facere et præstare possemus : Spondentes, et in verbo regio promittentes, nos omnia et singula quæcunque a dicto nostro Plenipotentiarario transigi et concludi contigerint, grata, rata et accepta, omni meliori modo, habituros, neque passuros unquam ut in toto, vel in parte, à quopiam violentur, aut ut iis in contrarium eatur. In quorum omnium majorem fidem et robur præsentibus, manu nostrâ regiâ signatis, magnum nostrum Magnæ Britanniæ sigillum appendi fecimus. Quæ dabantur in palatio nostro Divi Jacobis die vicesimo tertio mensis Aprilis, anno domini millesimo, septingentesimo octogesimo tertio, regni que nostri vicesimo tertio.<sup>1</sup>

§ 134. The full powers given in 1806 to Lord Yarmouth in the first instance, and afterwards to Lord Lauderdale and Lord Yarmouth conjointly, were worded in the same manner. Napoleon's full power to General Clarke on the same occasion ran as follows :

Napoléon par la grâce de Dieu, et les constitutions, Empereur des Français, Roi d'Italie, prenant entière confiance dans la fidélité pour Notre personne, et le zèle pour Notre service de Monsieur le Général de division Clarke, Notre conseiller intime du cabinet, et grand officier de la Légion d'honneur, Nous lui avons donné, et lui donnons par les présentes, plein et absolu pouvoir, commission, et mandement spécial, pour en notre nom, et avec tel ministre de Sa Majesté Britannique dûment autorisé à cet effet, convenir, arrêter, conclure, et signer, tels traités, articles, conventions, déclarations, et autres actes qu'il avisera bien être ; promettons d'avoir pour agréable et tenir ferme et stable, accomplir et exécuter ponctuellement tout ce que le dit plénipotentiaire aura promis et signé en vertu des présents pleins-pourvoirs, comme aussi d'en faire expédier les lettres de ratification en bonne forme, et de les faire délivrer pour être échangées dans le tems dont il sera convenu.

En foi de quoi Nous avons donné les présentes signées de notre main, contresignées et munies de Notre sceau Impérial.

A St. Cloud, le vingt-un juillet an mil huit cent six, de Notre règne le second.

NAPOLÉON.

Par l'Empereur, le Ministre Secrétaire d'État,  
HUGUES MARET.

Le Ministre des Relations Extérieures,  
CH. MAU. TALLEYRAND,  
Prince de Benevent.<sup>2</sup>

<sup>1</sup> Jenkinson, iii. 347.

<sup>2</sup> *Papers Relative to the Negotiations with France*, 75.

§ 135. At the present day the full powers issued to representatives for such purposes as the negotiation and signature of a treaty, or the settlement in a similar manner at a congress or conference of some question of international concern, vary greatly in form, according to the particular constitution or the settled practice of the country which issues them. In the case of Great Britain the form used for the signature of a treaty or convention between heads of states is shown in § 136, and the wording, it will be seen, follows in general that of the past (§ 133), though the use of Latin for such purposes has long been discontinued. Many countries adopt a similar formal style ; in the case of others it may be simpler, and the phraseology employed may vary considerably. Differences may exist also according to the degree of importance ascribed to the treaty, or whether it is to be concluded between heads of states or, on the other hand, between governments. The essential feature of all such documents is that they should show by their terms that the representative to whom they are issued is invested with all necessary authority on the part of the state concerned to take part in the negotiations pending, and to conclude and sign, subject if necessary to ratification, the treaty instrument which may result from these negotiations.

§ 136. The form of full power issued by the Court of St. James for the purpose of a treaty or convention between heads of states is as follows :

(*Signature*) George R.I.

George, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India, etc., etc., etc.,

To all and singular to whom these Presents shall come, Greeting !

Whereas for the better treating of and arranging certain matters which are now in discussion, or which may come into discussion, between Us and.....concerning ..... We have judged it expedient to invest a fit person with Full Power to conduct the said discussion on Our part *in respect of Great Britain and Northern Ireland* ; Know Ye therefore, that We, reposing especial Trust and Confidence in the Wisdom, Loyalty, Diligence and Circumspection of Our ..... have named, made, constituted and appointed, as We do by these presents name, make, constitute and appoint him Our undoubted Commissioner, Procurator and Plenipotentiary, *in respect of Great Britain and Northern Ireland* ; Giving to him all manner of Power and Authority to treat, adjust and conclude with such minister or ministers as may be vested with similar Power and Authority on the part of

.....any treaty, convention or agreement that may tend to the attainment of the above-mentioned end, and to sign for Us, and in Our Name, *in respect of Great Britain and Northern Ireland*, everything so agreed upon and concluded, and to do and transact all such other matters as may appertain thereto, in as ample manner and form, and with equal force and efficacy, as We Ourselves could do if personally present ; Engaging and Promising, upon Our Royal Word, that whatever things shall be so transacted and concluded by Our said Commissioner, Procurator and Plenipotentiary, *in respect of Great Britain and Northern Ireland*, shall, subject if necessary to Our ratification, be agreed to, acknowledged and accepted by Us in the fullest manner, and that We will never suffer, either in the whole or in part, any person whatsoever to infringe the same, or act contrary thereto, as far as it lies in Our power.

In witness whereof, We have caused Our Great Seal to be affixed to these Presents, which We have signed with Our Royal Hand.

Given at Our Court of St. James, the.....day of....., in the Year of Our Lord one thousand nine hundred and..... and in the.....year of Our Reign.

§ 137. In the case of an agreement between governments, the form of full power issued by His Majesty's Secretary of State for Foreign Affairs is as follows :

Whereas for the better treating of and arranging certain matters which are now in discussion, or which may come into discussion, between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of..... concerning .....it is expedient that a fit person should be invested with Full Power to conduct the said discussion on the part of the Government of the United Kingdom of Great Britain and Northern Ireland ; I, ....., His Majesty's Principal Secretary of State for Foreign Affairs, do hereby certify that .....is by these Presents named, constituted and appointed as Plenipotentiary and Representative having Full Power and Authority to agree and conclude, with such Plenipotentiary or Representative as may be vested with similar Power and Authority on the part of the Government of....., any Convention or Agreement that may tend to the attainment of the above-mentioned end, and to sign for the Government of the United Kingdom of Great Britain and Northern Ireland everything so agreed upon and concluded. Further I do hereby certify that whatever things shall be so transacted and concluded by the said Plenipotentiary and Representative, shall, subject if necessary to ratification by the Government of the United Kingdom of Great Britain and Northern Ireland, be agreed to, acknowledged and

accepted by the said Government of the United Kingdom of Great Britain and Northern Ireland in the fullest manner.

In witness whereof I have signed these Presents, and affixed hereto my seal.

Signed and sealed at the Foreign Office, London, the.... day of....., in the Year of our Lord 19...

(Seal)

(Signature of Secretary of State.)

§ 138. A French example :

Gaston Doumergue, Président de la République Française,  
A Tous Ceux qui ces présentes lettres verront, Salut ;

Une Conférence Internationale s'étant réunis à Londres en vue de conclure une Convention sur les marques de franc-bord, Nous avons chargé MM. Haarbleicher André Maurice, Directeur des services de la Flotte de Commerce et du Matériel Naval au Ministère de la Marine Marchande, Président de la Délégation, Lindemann René Hippolyte Joseph, directeur adjoint des services du Travail Maritime et de la Comptabilité au Ministère de la Marine Marchande, l'Ingénieur principal du génie maritime, Marie Jean Henri Théophile, attaché aux services de la Flotte de Commerce et du Matériel Naval au Ministère de la Marine Marchande, de Berthe A.H.A., administrateur délégué du Bureau Véritas, d'étudier toutes les questions qui font l'objet de cette réunion internationale et, par les présentes, les nommons et constituons Nos Plénipotentiaires à l'effet de négocier, conclure et signer avec le ou les Plénipotentiaires également munis de pleins pouvoirs de la part des Puissances contractantes, tels Arrangement, Convention, Déclaration ou Actes quelconques qui seront jugés nécessaires pour atteindre le résultat désiré. Promettant d'accomplir et d'exécuter tout ce que Nosdits Plénipotentiaires auront stipulé et signé au nom de la République Française, sans jamais y contrevenir, ni permettre qu'il y soit contrevenu directement ou indirectement pour quelque prétexte et de quelque manière que ce soit, sous la réserve de Nos Lettres de Ratification que Nous ferons délivrer en bonne et due forme pour être échangées dans le délai qui sera convenu. En foi de quoi, Nous avons fait apposer à ces présentes le sceau de la République.

Fait à Rambouillet, le 22 mai, 1930.

(Signed) GASTON DOUMERGUE.

Par le Président de la République

(Seal)

Le Ministre des Affaires Étrangères

(Signed) A. BRIAND.

§ 139. A United States example :

Herbert Hoover, President of the United States of America,  
To all to whom these Presents shall come, Greeting.

Know Ye, That reposing special trust and confidence in the integrity, prudence and ability of Mr. H. B. Walker, President of the American Steamship Owners' Association, Mr. David Arnott,

of the American Bureau of Shipping, Mr. Laurens Prior, of the Bureau of Navigation, Department of Commerce, Mr. H. C. Towle, of the Bethlehem Shipbuilding Corporation, Mr. S. D. McComb, of the Marine Office of America, Captain A. F. Pillsbury, of Pillsbury & Curtis, San Francisco, Mr. Robert F. Hand, of the Standard Oil Company, New York, Mr. James Kennedy, General Manager, Marine Department, Gulf Refining Company, New York, Mr. H. W. Warley, of the Ore Steamship Company, New York, and Rear-Admiral J. G. Tawresey, United States Navy, retired, Delegates of the United States of America to the International Conference on Load-Lines to convene at London on May 20, 1930, I have invested them jointly and severally with full and all manner of power and authority, for and in the name of the United States of America, to meet and confer with any persons duly authorised by the Governments of the States represented at the said International Conference, being invested with like power and authority, and with them to negotiate, conclude and sign a Convention on the subject of load-lines, the same to be transmitted to the President of the United States for his ratification, subject to the advice and consent thereto of the Senate of the United States.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed.

Done at the City of Washington this 29th day of April in the year of Our Lord 1930, and of the independence of the United States the one hundred and fifty-fourth.

(Seal)

(Signed) HERBERT HOOVER.  
By the President (signed) X.  
Acting Secretary of State.

#### § 139A. A Roumanian example :

Nous, Carol II, Roi de Roumanie, Nous confiant pleinement dans le zèle et le dévouement de Monsieur V. V. Tilea, député, lui donnons pleins-pouvoirs de négociier, de conclure et de signer, avec le ou les Plénipotentiaires—également munis de pleins-pouvoirs en bonne et due forme—de Sa Majesté Britannique un Traité de Commerce et de Navigation entre la Roumanie et la Grande-Bretagne.

En foi de quoi, Nous avons délivré les présentes, signées par Notre main et revêtues de Notre Sceau Royal.

Fait à Bucarest le 28 juillet, 1930.

(Seal)

(Signed) CAROL.  
Le Ministre des Affaires Étrangères *par interim*  
(Signed) ALEX. VAIDA VOEVOD.

#### § 139B. A German example :

Vollmacht,

Der Deutsche Botschafter in London, Herr Konstantin Freiherr von Neurath, wird hiermit bevollmächtigt, die in London zur

Unterzeichnung aufgelegte Übereinkunft über die Unterhaltung von Leuchtfeuern im Roten Meer im Namen des Deutschen Reichs vorbehaltlich der Ratifikation zu unterzeichnen.

Berlin, den 5. Dezember 1930.

(Seal)

(Signed) VON HINDENBURG.  
(Countersigned) CURTIUS.

§ 140. A Soviet Union example :

(Translation.)

The Central Executive Committee of the U.S.S.R. announces that it has empowered and hereby authorises the citizen Dimitri Vassilievich Bogomolov, Counsellor of the Soviet Embassy in Great Britain, to sign such acts as may be drawn up at the international Conference in London on load-lines.

Acts signed in pursuance of the present authorisation must be ratified in the manner prescribed by the laws of the U.S.S.R.

Moscow, May 31, 1930.

(Seal) President of the Central Executive Committee of the U.S.S.R., KALININ.  
Secretary of above, ENUKIDZE.  
Commissar for Foreign Affairs, LITVINOV.

§ 141. A full power issued by the Vatican for the purpose of the signature of the Universal Postal Convention runs as follows :

Segretario di Stato di Sua Santità.

Il sottoscritto Cardinale Pietro Gasparri, Segretario di Stato di Sua Santità, autorizza il Signor Prof. Hewins a rappresentare lo Stato della Città del Vaticano al Congresso Postale che si terrà a Londra col pieni poteri per negoziare e sottoscrivere a nome della Santa Sede la Convenzione Postale che in detto Congresso verterà concordata.

Dal Vaticano, 22 Giugno 1929.

(Seal)

P. CARD. GASPARRI.

## CHAPTER IX

### ADVICE TO DIPLOMATISTS

§ 142. OF the qualities necessary for the profession of a diplomatist, Callières treats in his famous work "De la manière de négocier avec les souverains,"<sup>1</sup> and his observations, though made two centuries ago, have still much to commend them to notice. In modern days methods of diplomacy are doubtless less subtle and tortuous than were those of the past ; while the rapidity of telegraphic communication now enables a negotiator to remain in constant touch with his government throughout. But national character and human nature have not changed to any appreciable extent. Callières' counsels are not here reproduced for the use of experienced diplomatists, but rather as hints that may prove serviceable to younger members of the profession. The following passages,<sup>2</sup> taken from his work, on the qualities of the good negotiator, may therefore fitly form an introduction to the present chapter.

§ 143.

Ces qualités sont un esprit attentif et appliqué, qui ne se laisse point distraire par les plaisirs, & par les amusemens frivoles, un sens droit qui conçoive nettement les choses comme elles sont, & qui aille au but par les voyes les plus courtes & les plus naturelles, sans s'égarer à force de raffinement & de vaines subtilitez qui rebuttent d'ordinaire ceux avec qui on traite, de la penetration pour découvrir ce qui se passe dans le cœur des hommes & pour sçavoir profiter des moindres mouvemens de leurs visages & des autres effets de leurs passions, qui échapent aux plus dissimulez ; un esprit fecond en expediens, pour aplanir les difficultez qui se rencontrent à ajuster les interêts dont on est chargé ; de la presence d'esprit pour répondre bien à propos sur les choses impreveuës, & pour se tirer par des réponses judicieuses d'un pas glissant ; une humeur égale, & un naturel tranquile & patient, toujours disposé à écouter sans distraction ceux avec qui il traite ; un abord toujours ouvert, doux, civil, agreable, des manières aisées & insinuanes qui contribuent beaucoup à acquerir les inclinations de

<sup>1</sup> Paris, 1716.

<sup>2</sup> The orthography and accentuation of the original are preserved.

ceux avec qui on traite, au lieu qu'un air grave & froid, & une mine sombre & rude, rebute & cause d'ordinaire de l'aversion.

Il faut surtout qu'un bon Négociateur<sup>1</sup> ait assez de pouvoir sur lui-même pour résister à la démanaison de parler avant que de s'être bien consulté sur ce qu'il a à dire, qu'il ne se pique pas de répondre sur le champ & sans préméditation sur les propositions qu'on lui fait, & qu'il prenne garde de tomber dans le deffaut d'un fameux Ambassadeur étranger de nôtre tems, qui étoit si vif dans la dispute, que lorsqu'on l'échauffoit en le contredisant, il reveloit souvent des secrets d'importance pour soutenir son opinion.

Il ne faut pas aussi qu'il donne dans le deffaut opposé de certains esprits mystérieux, qui font des secrets de rien, & qui érigent en affaires d'importance de pures bagatelles ; c'est une marque de petitesse d'esprit de ne sçavoir pas discerner les choses de consequence d'avec celles qui ne le sont pas, & c'est s'ôter les moyens de découvrir ce qui se passe, & d'acquérir aucune part à la confiance de ceux avec qui on est en commerce, lorsqu'on a avec eux une continuelle reserve.

Un habile Négociateur ne laisse pas penetrer son secret avant le tems propre ; mais il faut qu'il sçache cacher cette retenüe à ceux avec qui il traite ; qu'il leur temoigne de l'ouverture & de la confiance, & qu'il leur en donne des marques effectives dans les choses qui ne sont point contraires à ses desseins ; ce qui les engage insensiblement à y répondre par d'autres marques de confiance en des choses souvent plus importantes ; il y a entre les Négociateurs un commerce d'avis réciproques, il faut en donner, si on veut en recevoir, & le plus habile est celui qui tire le plus d'utilité de ce commerce, parce qu'il a des vûes plus étendûes, pour profiter des conjonctures qui se presentent.

Il ne suffit pas pour former un bon Négociateur, qu'il ait toutes les lumieres, toute la dexterité & les autres belles qualitez de l'esprit ; il faut qu'il ait celles qui dépendent des sentimens du cœur ; il n'y a point d'employ qui demande plus d'élevation & plus de noblesse dans les manieres d'agir.

Tout homme qui entre dans ces sortes d'employs avec un esprit d'avarice, & un desir d'y chercher d'autres interêts que ceux qui sont attachez à la gloire de réüssir & de s'attirer par là l'estime & les récompenses de son Maître, n'y sera jamais qu'un homme très-médiocre.

Pour soutenir la dignité attachée à ces emplois, il faut que celui qui en est revêtu, soit liberal & magnifique, mais avec choix & avec dessein, que sa magnificence paroisse dans son train, dans sa livrée & dans le reste de son equipage ; que la propreté, l'abondance, & même la délicatesse, regne sur sa table : qu'il donne souvent des fêtes et des divertissemens aux principales personnes de la Cour où il se trouve, & au Prince même, s'il est d'humeur à y prendre part, qu'il tâche d'entrer dans ses parties de divertis-

<sup>1</sup> Observe that the word *diplomate* did not exist when Callières wrote.

semens, mais d'une maniere agreable & sans le contraindre, & qu'il y apporte toûjours un air ouvert, complaisant, honnête et un desir continuel de lui plaire.

S'il est dans un État populaire, il faut qu'il assiste à toutes ses Diettes ou Assemblées, qu'il y tienne grande table pour y attirer les Députés, et qu'il s'y acquiere par ses honnestetez & par ses presens, les plus accreditez & les plus capables de détourner les résolutions préjudiciables aux interêts de son Maître, & de favoriser ses desseins.

Une bonne table facilite les moyens de scavoir ce qui se passe, lorsque les gens du pays ont la liberté d'aller manger chez l'Ambassadeur, & la dépense qu'il y fait est non seulement honorable, mais encore très-utile à son Maître lorsque le Négociateur la sçait bien mettre en œuvre. C'est le propre de la bonne chere de concilier les esprits, de faire naître de la familiarité et de l'ouverture de cœur entre les convives.

On appelle un Ambassadeur un honorable Espion ; parce que l'une des ses principales occupations est de découvrir les secrets des Cours où il se trouve, & il s'acquitte mal de son employ s'il ne sçait pas faire les dépenses necessaires pour gagner ceux qui sont propres à l'en instruire.

La fermeté est encore qualité très-necessaire à un Négociateur . . . un homme né timide n'est pas capable de bien conduire de grands desseins ; il se laisse ébranler facilement dans les accidens imprévus, la peur peut faire découvrir son secret par les impressions qu'elle fait sur son visage, & par le trouble qu'elle cause dans ses discours ; elle peut même lui faire prendre des mesures préjudiciables aux affaires dont il est chargé, & lorsque l'honneur de son Maître est attaqué, elle l'empêche de le soutenir avec la vigueur & la fermeté si necessaires en ces occasions, & de repousser l'injure qu'on luy fait, avec cette noble fierté & cette audace qui accompagnent un homme de courage. . . . Mais l'irresolution est très-préjudiciable dans la conduite des grandes affaires ; il y faut un esprit décisif, qui après avoit balancé les divers inconveniens, sçache prendre son parti & le suivre avec fermeté.

Un bon Négociateur ne doit jamais fonder le succès de ses negociations sur de fausses promesses & sur des manquemens de foy ; c'est une erreur de croire, suivant l'opinion vulgaire, qu'il faut qu'un habile Ministre soit un grand maître en l'art de fourber ; la fourberie est un effet de la petitesse de l'esprit de celui qui le met en usage & c'est une marque qu'il n'a pas assez d'étendue pour trouver les moyens de parvenir à ses fins, par les voyes justes & raisonnables.

Un homme qui se possède & qui est toûjours de sang froid a un grand avantage à traiter avec un homme vif & plein de feu ; & on peut dire qu'ils ne combattent pas avec armes égales. Pour réussir en ces sortes d'employs, il y faut beaucoup moins parler qu'écouter ; il faut du flegme de la retenuë, beaucoup de discretion & une patience à toute épreuve.

Un homme engagé dans les emplois publics, doit considerer qu'il est destiné pour agir & non pas pour demeurer trop longtemps enfermé dans son cabinet, que sa principale étude doit être de s'instruire de ce qui se passe parmi les vivans, préferablement à tout ce qui s'est passé chez les morts.

Un sage & habile Négociateur doit non seulement être bon Chrétien ; mais paroître toujours tel dans ses discours & dans sa maniere de vivre.

Il doit être juste & modeste dans toutes ses actions, respectueux avec les Princes, complaisant avec ses égaux, carressant avec ses inférieurs, doux, civil & honneste avec tout le monde.

Il faut qu'il s'accommode aux mœurs & aux Coûtumes du Pays où il se trouve, sans y témoigner de la repugnance & sans les mépriser, comme font plusieurs Négociateurs qui loient sans cesse les manieres de vivre de leurs pays pour trouver à redire à celles des autres.

Un Négociateur doit se persuader une fois pour toutes qu'il n'est pas assez autorisé pour réduire tout un pays à sa façon de vivre, & qu'il est bien plus raisonnable qu'il s'accommode à celle du Pays où il est pour le peu de temps qu'il y doit rester.

Il ne doit jamais blâmer la forme du gouvernement & moins encore la conduite du Prince avec qui il négocie, il faut au contraire qu'il loie tout ce qu'il y trouve de loüable sans affectation et sans basse flaterie. Il n'y a point de Nations & d'Etats qui n'ayent plusieurs bonnes loix parmy quelques mauvaises, il doit louer les bonnes & ne point parler de celles qui ne le sont pas.

Il est bon qu'il sache ou qu'il étudie l'histoire du Pays où il se trouve, afin qu'il ait occasion d'entretenir le Prince ou les principaux de sa Cour des grandes actions de leurs Ancêtres & de celles qu'ils ont faites eux-mêmes ce qui lui est fort capable de lui acquérir leur inclination, qu'il les mette souvent sur ces matières, & qu'il se les fasse raconter par eux, parce qu'il est sûr qu'il leur fera plaisir de les écouter, et qu'il doit rechercher à leur en faire.

Un Négociateur doit toujours faire des relations avantageuses, des affaires de son Maître dans le pays où il se trouve, mais avec discretion & en se conservant de la creance pour les avis qu'il donne ; il faut pour cela qu'il évite de débiter des mensonges, comme font souvent certains Ministres de nos voisins qui ne font aucun scrupule de publier des avantages imaginaires en faveur de ceux de leur party. Outre que le mensonge est indigne d'un Ministre public, il fait plus de tort que de profit aux affaires de son Maître, parce qu'on n'ajoute plus de foy aux avis qui viennent de sa part ; il est vray qu'il est difficile de ne pas recevoir quelquefois de faux avis, mais il faut les donner tels qu'on les a reçus, sans s'en rendre garand ; & un habile Négociateur doit établir si bien la reputation de sa bonne-foy dans l'esprit du Prince & des Ministres avec qui il négocie, qu'ils ne doutent point de la verité de ses avis lorsqu'il les leur a donnez pour sûrs non plus que de la verité de ses promesses.

Un Ambassadeur doit éviter de recevoir au nombre de ses principaux domestiques des gens du Pays où il se trouve, ce sont d'ordinaire des espions qu'il introduit dans sa maison.

Quelques élevez que soient les Princes, ils sont hommes comme nous, c'est-à-dire sujets aux mêmes passions, mais outre celles qui leur sont communes avec les autres hommes, l'opinion qu'ils ont de leur grandeur, & le pouvoir effectif qui est attaché à leur rang leur donnent des idées différentes de celles du commun des hommes, & il faut qu'un bon Négociateur agisse avec eux par rapport à leurs idées, s'il veut ne pas se tromper.

Il est plus avantageux à un habile Négociateur de negocier de vive voix, parce qu'il a plus d'occasions de découvrir par ce moyen les sentimens & les desseins de ceux avec qui il traite, & d'employer sa dextérité à leur en inspirer de conformes à ses vûes par ses insinuations & par la force de ses raisons.

La plûpart des hommes qui parlent d'affaires ont plus d'attention à ce qu'ils veulent dire qu'à ce qu'on leur dit, ils sont si pleins de leurs idées qu'ils ne songent qu'à se faire écouter, & ne peuvent presque obtenir sur eux-mêmes d'écouter à leur tour. . . . L'une des qualitez le plus necessaire à un bon Négociateur est de sçavoir écouter avec attention & avec réflexion tout ce qu'on luy veut dire, & de répondre juste & bien à propos aux choses qu'on luy represente, bien-loin de s'empresser à declarer tout ce qu'il sçait & tout ce qu'il desire. Il n'expose d'abord le sujet de sa negociation que jusqu'au point qu'il faut pour sonder le terrain, il regle ses discours & sa conduite sur ce qu'il découvre tant par les réponses qu'on lui fait, que par les mouvemens du visage, par le ton & l'air dont on lui parle ; & par toutes les autres circonstances qui peuvent contribuer à luy faire penetrer les pensées & les desseins de ceux avec qui il traite, & après avoir connu la situation & la portée de leurs esprits, l'état de leurs affaires, leurs passions & leurs interests, il se sert de toutes ses connoissances pour les conduire par dégrez au but qu'il s'est proposé.

C'est un des plus grands secrets de l'art de negocier que de sçavoir, pour ainsi dire, distiler goût à goût dans l'esprit de ceux avec qui on négocie les choses qu'on a interest de leur persuader. . . .

Comme les affaires sont ordinairement épineuses par les difficultez qu'il y a d'ajuster des interests souvent opposez entre des Princes & des Etats qui ne reconnoissent point de Juges de leurs pretentions, il faut que celui qui en est chargé employe son adresse à diminuer & à aplanir ces difficultez, non seulement par les expediens que ses lumieres luy doivent suggerer, mais encore par un esprit liant & souple qui sçache se plier & s'accommoder aux passions & même aux caprices & aux préventions de ceux avec qui il traite. Un homme difficultueux & d'un esprit dur & contrariant augmente les difficultez attachées aux affaires par la rudesse de son humeur, qui aigrit & aliene les esprits, & il érige souvent en affaires d'importance des bagatelles & des prétentions

mal fondées, dont il se fait des especes d'entraves qui l'arrêtent à tous momens dans le cours de sa negociation.

Il ne se trouve presque point d'hommes qui veuillent avouer qu'ils ont tort, ou qu'ils se trompent, & qui se dépoüillent entierelement de leurs sentimens en faveur de ceux d'autrui, quand on ne fait que les contredire par des raisons opposées quelques bonnes qu'elles puissent être, mais il y en a plusieurs qui sont capables de se relâcher de quelques-unes de leurs opinions, quand on leur en accorde d'autres, ce qui se fait moyennant certains menagemens propres à les faire revenir de leurs préventions ; il faut pour cela avoir l'art de leur alleguer des raisons capables de justifier ce qu'ils ont fait ou ce qu'ils ont crû par le passé, afin de flater leur amour propre, & leur faire connoître ensuite des raisons plus fortes appuyées sur leurs intérêts, pour les faire changer de sentiment et de conduite . . . il faut éviter les contestations aigres & obstinées avec les Princes & avec leurs Ministres & leur représenter la raison sans trop de chaleur, & sans vouloir avoir toujours le dernier mot.

§ 144. Letter of the first Earl of Malmesbury to Lord Camden, written at his request, on his nephew, Mr. James, being destined for the foreign service :

Park Place, April 11, 1813.

MY DEAR LORD,

It is not an easy matter in times like these, to write anything on the subject of a Foreign Minister's conduct that might not be rendered inapplicable to the purpose by daily events. Mr. James' best school will be the advantage he will derive from the abilities of his Principal, and from his own observations.

The first and best advice I can give a young man on entering this career, is *to listen, not to talk*—at least, not more than is necessary to induce others to talk. I have in the course of my life, by endeavouring to follow this method, drawn from my opponents much information, and concealed from them my own views, much more than by the employment of spies or money.

To be very cautious in *any* country, or at *any* court, of such as, on your first arrival, appear the most eager to make your acquaintance and communicate their ideas to you. I have ever found their professions insincere, and their intelligence false. They have been the first I have wished to shake off, whenever I have been so imprudent as to give them credit for sincerity. They are either persons who are not considered or respected in their own country, or are put about you to entrap and circumvent you as newly arrived.

Englishmen should be most particularly on their guard against such men, for we have none such on our side the water, and are ourselves so little *coming* towards foreigners, that we are astonished and gratified when we find a different treatment from that which strangers experience here ; but our reserve and *ill manners* are

infinitely less dangerous to the stranger than these premature and hollow civilities.

To avoid what is termed abroad an *attachement*. If the other party concerned should happen to be sincere, it absorbs too much time, occupies too much your thoughts ; if insincere, it leaves you at the mercy of a profligate and probably interested character.

Never to attempt to export English habits and manners, but to conform as far as possible to those of the country where you reside—to do this even in the most trivial things—to learn to speak their language, and never to sneer at what may strike you as singular and absurd. Nothing goes to conciliate so much, or to amalgamate you more cordially with its inhabitants, as this very easy sacrifice of *your* national prejudices to *theirs*.

To keep your cypher and all your official papers under a very secure lock and key ; but not to *boast* of your precautions, as Mr. Drake did to Mehée de la Touche.

Not to allow any opponent to carry away any official document, under the pretext that he wishes “ to study it more carefully ” ; let him read it as often as he wishes, and, if it is necessary, allow him to take minutes of it, but *both in your presence*.

Not to be carried away by any real or supposed distinctions from the sovereign at whose Court you reside, or to imagine, because he may say a few more commonplace sentences to you than to your colleagues, that he entertains a special personal predilection for you, or is more disposed to favour the views and interests of your Court than if he did not notice you at all. This is a species of royal stage-trick, often practised, and for which it is right to be prepared.

Whenever you receive *discretionary* instructions (that is, when authority is given you) in order to obtain any very desirable end, to decrease your demands or increase your concessions according as you find the temper and disposition of the Court where you are employed, and to be extremely careful not to let it be supposed that you have any such authority ; to make a firm, resolute stand on the first offer you are instructed to make, and, if you find “ *this nail will not drive,* ” to bring forward your others *most gradually*, and not, either from an apprehension of not succeeding at all, or from an over-eagerness to succeed too rapidly, injure essentially the interests of your Court.

It is scarcely necessary to say that no occasion, no provocation, no anxiety to rebut an unjust accusation, no idea, however tempting, of promoting the object you have in view, can *need*, much less justify, a *falsehood*. Success obtained by one is a precarious and baseless success. Detection would ruin, not only your own reputation for ever, but deeply wound the honour of your Court. If, as frequently happens, an indiscreet question, which seems to require a distinct answer, is put to you abruptly by an artful minister, parry it either by treating it as an indiscreet question, or get rid of it by a grave and serious look : but on no account

contradict the assertion flatly if it be true, or admit it as true, if false and of a dangerous tendency.

In ministerial conferences, to exert every effort of *memory* to carry away faithfully and correctly what *you hear* (what *you say* in them yourself you will not forget) ; and, in drawing your report, to be most careful it should be faithful and correct. I dwell the more on this (seemingly a useless hint) because it is a most seducing temptation, and one to which we often give way almost unconsciously, in order to give a better turn to a phrase, or to enhance our skill in negotiation ; but we must remember we mislead and deceive our Government by it.

I am, etc.<sup>1</sup>

§ 145. A good diplomatist will always endeavour to put himself in the position of the person with whom he is treating, and try to imagine what he would wish, do and say, under those circumstances. As Callières observed :—

“ Il faut qu’il se dépouille en quelque sorte de ses propres sentimens pour se mettre en la place du Prince [say, the government] avec qui il traite, qu’il se transforme, pour ainsi dire en luy, qu’il entre dans ses opinions & dans ses inclinations, & qu’il se dise à lui-même après l’avoir connu tel qu’il est, *si j’étois en la place de ce Prince avec le même pouvoir, les mêmes passions & les mêmes préjugés, quels effets produiroient en moy les choses que j’ay à luy représenter ?* ”

§ 146. The man who speaks in a foreign tongue, not his own, is to a certain extent wearing a disguise. If one wants to discover his ideas *de derrière la tête* encourage him to use his own language. Prince Bismarck is reported to have said : “ Der alte (ich verstand Meyendorff) hat mir einmal gesagt : Trauen Sie keinen Engländer der das Französische mit richtigem Accent spricht, und ich habe das meist bestätigt gefunden. Nur Odo Russell möchte ich ausnehmen.” This remark cuts both ways. On the other hand, a minister who can spare time to study the language of the country to which he is sent, will find its acquisition of great advantage. The surest way to gain admission to the heart of a nation is to give this proof of a desire to cultivate intimate relations with, and to understand the feelings of, the people.

§ 147. A diplomatist must be on his guard to protect the dignity of the state which he represents. Thus, the Duc de Mortemart, French ambassador at Petersburg, having been invited to attend a performance of the *Te Deum* in celebration of Russian victories over the Turks, learnt that it was to be given in a church decorated with flags taken from the French, and on this ground declined to be present. This course was

<sup>1</sup> *Diaries and Correspondence*, iv. 420.

approved by both his own government and by the Emperor of Russia.<sup>1</sup> In October, 1831, after the capture of Warsaw from the Polish insurgents by the Russian troops, M. Bourgoing, the French minister, refused to be present at a *Te Deum* ordered to celebrate the triumph of the Russian Government, and he informed Count Nesselrode of his intention to absent himself, his reason being the strong sympathy for the Poles which was felt in France. On the same day he dined at an official banquet given at the Austrian embassy, went publicly the next day to the theatre, and passed the evening at a private house. It does not appear that his conduct was made a ground of complaint to the French Government by the Emperor.<sup>2</sup> But it is scarcely admissible for an envoy to refuse to be present on such occasions, merely on the ground of friendship between his own country and the belligerent over whose defeat the rejoicing is held.

§ 148. The head of a mission should be careful that the affairs, the manners and customs, of the country in which he is residing are not criticised at his table. What he or his guests may say on such subjects is sure to be repeated to his disadvantage.

§ 149. A diplomatist should not hold government bonds or shares in a limited liability company in the territory of the state where he is accredited, and in general, neither real nor personal property which is under the local jurisdiction. *A fortiori* he should not engage in trade or hold directorships, or speculate on the Stock Exchange. He must not incur the risk of his judgment as to the financial stability of the state or of local commercial undertakings being deflected by his personal interest.

§ 150. A diplomatist must be on his guard against the notion that his own post is the centre of international politics, and against an exaggerated estimate of the part assigned to him in the general scheme. Those in whose hands is placed the supreme direction of foreign relations are alone able to decide what should be the main object of state policy, and to estimate the relative value of political friendships and alliances.

§ 151. In former times a wide discretion in the interpretation of his instructions was permitted to an envoy, in case it became necessary to take a sudden decision, but in these days, when telegraphic communication is universal, if he is of opinion that his instructions are not perfectly adapted to secure the object in view, he can easily ask for the modification he judges to be

<sup>1</sup> Garden, *Traité complet de la Diplomatie*, ii. 84.

<sup>2</sup> F. de Martens, *Recueil des Traités*, etc., xv. 140.

desirable. In doing this he will be well advised to explain his reasons at full length. It is better to spend money on telegrams than to risk the failure of a negotiation.

§ 152. A diplomatic agent should beware of communicating the text of the instructions he receives, whether by telegram or written despatch, unless he is specifically told to do so. It sometimes happens that he is told to read a despatch to the minister for foreign affairs, and to leave with him a copy. With this exception, the ambassador should generally confine himself to making the sense of his instructions known by note, or by word of mouth. In communicating the contents of a cyphered telegram he should be especially careful so to change the wording and order of sentences as to afford no clue to the cypher used by his government.

The case of Bulwer at Madrid, in 1848, who enclosed, in an official note to the Spanish Minister for Foreign Affairs, a copy of a despatch of March 16, marked "confidential," in which Palmerston instructed him to offer to the Spanish Government advice on the internal affairs of the kingdom, is an example of the unwisdom of putting in writing language which, if used orally, would have been much less likely to give offence. (See § 505.)

§ 153. Before sending home the report of any important conversation with the minister for foreign affairs, in which the latter has made statements or given promises that may afterwards be relied on as evidence of intentions or undertakings of the government in whose name he is assumed to have spoken, it may be advisable to submit to him the draft report for any observations he may desire to make. It is said that Lord Normanby, when ambassador at Paris, reproduced a conversation of M. Guizot's, which the latter asserted was incorrect, and he pointed out that the report of a conversation made by a foreign agent can only be regarded as authentic and irrefragable when it has previously been submitted to the person whose language is being reported. He added that if Lord Normanby had conformed to this practice, he would have spoken otherwise and perhaps better.<sup>1</sup>

§ 154. In concluding any written agreement with the state to which he is accredited, the agent should take ample time to study the document carefully so as to avoid any ambiguity or imperfection in the terms employed. The use of clear and definite language should in all cases be secured, the meaning of which shall not be open to doubt or dispute.

<sup>1</sup> Ollivier, *L'Empire Libéral*, i. 322.

§ 155. *Despatches, their style :*

“ Il faut que le stile des dépêches soit net & concis, sans y employer de paroles inutiles & sans y rien obmettre de ce qui sert à la clarté du discours, qu’il regne une noble simplicité, aussi éloignée d’une vaine affectation de science & de bel esprit, que de négligence & de grossièreté, & qu’elles soient également épurées de certaines façons de parler nouvelles & affectées, & de celles qui sont basses & hors du bel usage. Il y a peu de choses qui puissent demeurer secrettes parmi les hommes qui ont un long commerce ensemble, des lettres interceptées & plusieurs autres accidens imprévus les découvrent souvent, & on en pourrait citer ici divers exemples ; ainsi il est de la sagesse d’un bon Negociateur de songer lorsqu’il écrit que ses dépêches peuvent être vûes du Prince ou des Ministres dont il parle, & qu’il doit les faire de telle sorte qu’ils n’ayent pas de sujet legitime de s’en plaindre.<sup>1</sup>”

§ 156. An English writer of despatches should be careful to eschew Gallicisms or idioms borrowed from the language of the country where he is serving. Such phrases as “it goes without saying” (for “of course”), “the game is not worth the candle” (for “it is not worth while”), “in this connexion,” “that gives furiously to think” (for “that is a serious subject for reflection”), and others adopted from the current style of journalism, are to be avoided. “Transaction” for “compromise” ; “franchise of duties” for “freedom from [customs] duties” ; “category” for “class” ; “suscitate” for “raise” ; “destitution” for “dismissal” ; “rally themselves to” for “come round to,” and “minimal” for “very small” are also cases in point. “Psychological moment” is a mistranslation of “*das psychologische Moment*,” which properly means “the psychological factor.” Never place an adjective before a noun, if it can be spared ; it only weakens the effect of a plain statement. Above all, do not attempt to be witty. Each despatch should treat of one subject only, and the paragraphs should be numbered to admit of convenient reference. To keep a diary of events and of conversations is very useful.

§ 157. One of the chief functions of the head of a mission is to train the junior members of the service in the right performance of their duties, especially in the preparation of reports on subjects of interest, in drafting despatches and in paraphrasing the text of cyphered telegrams. This last should be done in such a manner as to afford no clue to the order of words in the original.

<sup>1</sup> Callières, *op. cit.*, 298, 304.

§ 158. The duties of the head of a mission include also the furtherance of the legitimate private interests of his own countrymen residing in or passing through the country to which he is accredited, the giving of advice to them when in difficulties, and especially intervention on their behalf, if they invoke his assistance when they are arrested and detained in custody. This should be done through the ministry for foreign affairs, to which alone he is entitled to address himself. He should not, however, interfere in civil actions that may be brought against them, or in criminal matters except where manifest injustice or a departure from the strict course of legal procedure has taken place. He must on no account occupy himself with the interests of any but the subjects or *ressortissants* (a much wider term) of his own sovereign or state, and especially not with those of the subjects of the local sovereign.

§ 159. At the present day the commercial intercourse of nations constitutes a sphere of great and increasing importance, and a diplomatic agent may often be engaged in the conduct of negotiations with the government to which he is accredited, with a view of fostering and developing relations of trade and commerce between the two countries. Recently Mr. Lansing, a former Secretary of State of the United States, has observed :

“Formerly diplomacy was confined almost exclusively to political and legal subjects, and the training of the members of the diplomatic service was devoted to that branch of international intercourse. To-day our embassies and legations are dealing more and more with commercial, financial and industrial questions.”<sup>1</sup>

At many capitals the diplomatic agent is now assisted by a commercial counsellor, secretary, or attaché, who may also be charged with special functions in the way of furnishing periodical reports on matters of trade and commerce to his government.

§ 160. The diplomatic agent may grant passports to his own countrymen and certify signatures to legal documents on their behalf. But in British practice, and in that of most important countries, the duties of issuing passports and of performing such notarial acts as are allowable under the laws of the foreign state wherein they reside, are now delegated to consular officers.

§ 161. A diplomatist ought not to publish any writing on international politics either anonymously or with his name. The rule of the British service is very strict in regard to the

<sup>1</sup> Lay, *Foreign Service of the United States*, 120.

publication of experiences in any country where a diplomatist has served, without the previous sanction of the Secretary of State, and it applies to retired members as well as to those still on active service.

### § 162. *Bribery.*

The books generally condemn the employment of bribes to obtain secret information or to influence the course of negotiation. Many cases are, however, recorded in history of such proceedings being practised on a large scale, and with considerable effect. Besides gifts, the furnishing of articles to the press, or information which editors would not be able to secure otherwise, was also found of great utility for influencing public opinion. "L'ambassadeur [Count Lieven] reçut enfin l'ordre d'exercer, par l'entremise de la presse périodique, une pression sur l'opinion publique et de démontrer au peuple anglais que son intérêt le plus naturel exigeait l'alliance et l'amitié de la Russie pour le meilleur développement de son commerce et de son industrie."<sup>1</sup> This was a century or more since, but instances of more recent date could no doubt be quoted.

"If an envoy seek by means of presents to secure the goodwill or friendship of those who can assist him in attaining his objects, but without either expressly or tacitly asking from them anything wrong, this is not to be regarded as bribery."<sup>2</sup>

"It must be left to the ingenuity of the envoy to form connections which will enable him to obtain news and to verify what he receives. The Law of Nations appears to hold that it is not forbidden to obtain information by means of bribery; at least no one doubts the daily practice of this expedient, and though it has often been censured, in other cases it has been not obscurely admitted. . . . An uniform policy, armed with strength and honesty, has little to apprehend from what is concealed, in either foreign or domestic affairs, and steady attention to what passes around us will mostly enable us to divine what is secret."<sup>3</sup>

It may be that the Law of Nations is not concerned with bribery. It seems rather a question of morality.

<sup>1</sup> F. de Martens, *Recueil des Traités, etc.*, xi. 212.

<sup>2</sup> G. F. de Martens, *Précis du Droit des Gens*, ii. 116.

<sup>3</sup> Schmalz, *Europäisches Völkerrecht*, 98.

## CHAPTER X

### LATIN AND FRENCH PHRASES

§ 163. *Ultimatum*.—This term signifies a note or memorandum in which a government or its diplomatic representative sets forth the conditions on which the state in whose name the declaration is made will insist. It should contain an express demand for a prompt, clear and categorical reply, and it may also require the answer to be given within a fixed limit of time. This is as much as to say that an *ultimatum* embodies the final condition or concession, "the last word," so to speak, of the person negotiating.<sup>1</sup> It ordinarily, but not always, implies a threat to use force, if the demand is not complied with.

§ 164. A good example of this is contained in the last paragraph of a note addressed by the Russian chargé d'affaires at Constantinople to the Reis-Effendi in 1826, which was thus worded :

Le soussigné terminera la tâche que lui imposent les instructions de son souverain, en déclarant à la Porte Ottomane que, si, contre la légitime attente de l'Empereur, les mesures indiquées dans les trois demandes qui forment le présent office n'auraient pas été mises complètement à exécution dans le délai de six semaines, il quitterait aussitôt Constantinople. Il est facile aux ministres de Sa Hautesse de prévoir les conséquences immédiates de cet événement.

Le soussigné, etc.

MINCIAKI.<sup>2</sup>

Constantinople,  
le 5 avril, 1826.

§ 165. Another case of *ultimatum* in the ordinary sense occurred in 1850, when, by the orders of Palmerston, the British minister at Athens presented a demand for the settlement of the Don Pacifico claim within twenty-four hours, failing which a blockade of the coasts of Greece would be established and Greek merchant ships seized.<sup>3</sup>

The note from the British minister to the Greek Minister

<sup>1</sup> Cussy, *Dictionnaire du Diplomate et du Consul*, s.v. ; Oppenheim, ii. § 95.

<sup>2</sup> Gardien, *Traité Complet de Diplomatie*, iii. 344.

<sup>3</sup> *Br. and For. State Papers*, xxxix. 491.

for Foreign Affairs of Jan. 5/17, 1850, after making a formal demand for reparation for the wrongs and injuries inflicted in Greece upon British and Ionian subjects, and the satisfaction of their claims within twenty-four hours, announced that if the demand were not literally complied with within that period after the note had been placed in the hands of the Hellenic Minister for Foreign Affairs, the Commander-in-Chief of Her Majesty's naval forces in the Mediterranean would have no other alternative (however painful the necessity might be to him) than to act at once on the orders he had received from Her Majesty's Government.<sup>1</sup>

§ 166. Art. I of the Hague Convention No. 3 of 1907 declares that :

“ Les Puissances contractantes reconnaissent que les hostilités entre elles ne doivent pas commencer sans un avertissement préalable et non équivoque, qui aura, soit la forme d'une déclaration de guerre motivée, soit celle d'un ultimatum avec déclaration de guerre conditionnelle.”

§ 167. Austrian *ultimatum* to Serbia. This took the form of a note, dated July 23, 1914, to the Serbian Government, containing various demands, and requiring an answer by six o'clock in the evening of the 25th. The reply of the Serbian Government not being regarded as satisfactory, the Austro-Hungarian minister left Belgrade, and war was declared against Serbia on the 28th.

§ 168. On July 31, 1914, the German ambassador in Paris asked the President of the Council (who was also minister for foreign affairs) what would be the attitude of France in the case of war between Germany and Russia, and said he would return for a reply at one o'clock on the following day. On August 3, at 6.45, alleging acts of aggression committed by French aviators, he communicated a declaration of war. This does not appear to have been preceded by an *ultimatum*.

§ 169. At midnight on July 31, 1914, the German ambassador at St. Petersburg, by order of his government, informed the Russian minister for foreign affairs that if within twelve hours Russia had not begun to demobilise, Germany would be compelled to give the order for mobilisation, and at 7.10 P.M. on August 1 the German Government, on the alleged ground that Russia had refused this demand, presented a declaration of war. The demand for demobilisation was in the nature of an *ultimatum*.

<sup>1</sup> See also Ollivier, *L'Empire Libéral*, ii. 320; and F. de Martens, *Recueil des Traités*, etc., xii. 262.

§ 170. The German *ultimatum* to Belgium of August 2, 1914, demanded permission to march through Belgian territory and threatened to regard Belgium as an enemy

“sollte Belgien den deutschen Truppen feindlich entgegentreten, insbesondere ihrem Vorgehen durch Widerstand der Maas-Befestigungen oder durch Zerstörungen von Eisenbahnen, Strassen, Tunneln oder sonstigen Kunstbauten Schwierigkeiten bereiten.”

The note of the German minister presenting this demand did not mention any length of time for an answer, but it appears from the telegram of August 3 sent out by the Belgian minister for foreign affairs to the Belgian ministers at St. Petersburg, Berlin, London, Paris, Vienna and The Hague, that the German minister had verbally required an answer within twelve hours.

§ 171. On the same occasion the British Government, on July 31, asked the German and French Governments to engage to respect the neutrality of Belgium, adding that it was important to have an early reply. France at once acceded to the request, but, no reply having been received from the German Government, Great Britain on August 4 protested against a violation of the treaty by which Belgium was constituted a neutralized state, and requested an assurance that her neutrality would be respected by Germany. Later in the day a telegram was sent to Berlin, instructing the ambassador to ask for the same assurance to respect the neutrality of Belgium as had been given by France, and for a satisfactory reply to the requests of July 31 and of that of the morning of August 4 to be received in London by midnight. These requests, especially the last, amounted in substance to an *ultimatum*.

§ 172. But the meaning of *ultimatum* is not restricted to the sense which it bears in the foregoing examples. During the course of a negotiation it may imply the *maximum* amount of concession which will be made in order to arrive at an agreement, where no resort to compulsion is contemplated in case of refusal. Cases have occurred in which it has been used as denoting an irreducible minimum which would be accepted, a plan or scheme of arrangement which it was sought to impose, a maximum of what would be conceded, and the like.

§ 173. *Uti possidetis* and *Status quo*.

These two phrases often amount to the same thing, and are used to denote actual possession by right of conquest, occupation or otherwise, at some particular moment, which has to be defined with as much exactness as possible in the

proposals for a treaty of peace, or in the treaty itself.<sup>1</sup> But while *uti possidetis* relates to the possession of territory, the *status quo* may be the previously existing situation in regard to other matters, *e.g.* to privileges enjoyed by one of the parties at the expense of the other, such as the French privilege of taking and drying fish on a portion of the coast of Newfoundland.

In the memorial of the King of France of March 16, 1761, it was proposed

that the two Crowns shall remain in possession of what they have conquered from each other, and that the situation in which they shall stand on the 1st September, 1761, in the East Indies, on the 1st July in the West Indies and Africa, and on the 1st May following in Europe, shall be the position which shall serve as a basis to the treaty which may be negotiated between the two Powers.<sup>2</sup>

The British reply accepted the *status quo*, but it is alleged to have said nothing "with regard to the epochs." It did, in fact, say<sup>3</sup> that

"expeditions at sea requiring preparations of long standing, and depending on navigations which are uncertain, as well as on the concurrence of seasons, in places which are often too distant for orders relative to their execution to be adapted to the common vicissitudes of negotiations, which for the most part are subject to disappointments and delays, and are always fluctuating and precarious : from whence it necessarily results, that the nature of such operations is by no means susceptible, without prejudice to the party who employs them, of any other epochs than those which have reference to the day of signing the treaty of peace."

The French Government took this to mean that the date of the treaty of peace should be the epoch to fix the possessions of the two Powers, and delivered a memorial of April 19, insisting on the dates previously proposed by them. On this, the British Government replied that they were ready to negotiate as to the dates. The French envoy to London was furnished with "extremely simple instructions."

The basis of them regarded the proposition *Uti Possidetis* and he was enjoined to demand of the British Minister, whether the King of England accepted of the periods annexed to the proposition of *Status quo*, and if His Britannic Majesty did not accept of them, what new periods he proposed to France ?<sup>4</sup>

<sup>1</sup> Foster, *A Century of American Diplomacy*, 246, defines *uti possidetis* by the belligerents of the territory occupied by their armies at the end of the war, but this seems too absolute. Cf. Oppenheim, ii. § 263.

<sup>2</sup> Jenkinson, iii. 91.

<sup>3</sup> *Ibid.*, 95, 96.

<sup>4</sup> *Ibid.*, 108.

The British proposal in reply was that July, September and November should respectively be the periods for fixing the *Uti possidetis*. So much difficulty arose from this original proposal of *Uti possidetis*, that it was ultimately replaced by a series of mutual concessions of territory to take place in consequence of the treaty which might be eventually concluded. In the preliminaries of peace finally signed at Fontainebleau, November 3, 1762, it was provided, for instance, by Art. 7 that Great Britain should restore the fortresses in Guadeloupe, Mariegalante, Desirade, Martinique and Belle-isle<sup>1</sup> in the same condition as when they were conquered by the British arms, *i.e. in statu quo*, and the French trading posts in India "in the condition in which they now are," *i.e. also in statu quo*.<sup>2</sup> These stipulations were renewed in the definitive treaty of peace of February 10, 1763.<sup>3</sup>

In stipulating for *uti possidetis* or for *status quo*, it is consequently of the utmost importance to fix the date to which either expression is to relate.

When on the conclusion of a treaty of peace the belligerents agree mutually to restore all their conquests, they are said to revert to the *status quo ante bellum*.<sup>4</sup> In 1813 Napoleon drafted instructions for his plenipotentiaries to the Congress of Prague: "Quant aux bases, n'en indiquer qu'une seule: l'*Uti possidetis ante bellum*," meaning by that the relative possessions of France and the Continental alliance before the invasion of Russia in 1812.<sup>5</sup>

In May 1850 the French President, Prince Napoleon, demanded of the Porte that the privileges accorded to the Latin Church by the treaty between Francis I and Soliman should be upheld, without regard to those granted to the Greek Church by various firmans. The Emperor Nicholas resented this action, and addressed a letter to the Sultan Abdul Medjid in which he insisted on the maintenance of the *status quo* with respect to the Holy Places, *i.e.* the arrangements that had existed up to that time in virtue of the firmans.<sup>6</sup> This is a case in which *status quo* has nothing to do with the state of territorial possession.

English writers ordinarily use the form *status quo*. *Statu quo* is the foreign expression for the same thing.

#### § 174. *Ad referendum* and *Sub spe rati*.

When the sovereign whom a diplomatic agent represents,

<sup>1</sup> Jenkinson, iii. 170.

<sup>2</sup> *Ibid.*, 171.

<sup>3</sup> *Ibid.*, 177.

<sup>4</sup> Foster, *A Century of American Diplomacy*, 246.

<sup>5</sup> Sorel, *L'Europe et la Révolution française*, viii. 159.

<sup>6</sup> Ollivier, *L'Empire Libéral*, ii. 323.

or to whom he is accredited, dies, the mission of the agent is, strictly speaking, at an end. During the interval which must elapse before he can receive fresh credentials, he may carry on a negotiation which has already been commenced, *sub spe rati*, i.e. in the expectation that what he promises will be ratified by his sovereign.<sup>1</sup>

It has also been said that when a proposal is made to an agent, and the case is urgent and the distance from his own country is considerable, he may accept or decline it *sub spe rati*.<sup>2</sup> But in these days, when telegraphic communication is possible between capitals even the most distant from each other, a prudent diplomatist will take care not to commit his government by a provisional acceptance of what is not warranted by his previous instructions. The utmost he will do will be to receive the proposal *ad referendum*. *Sub spe rati* may be explained to indicate that the agent is himself inclined to favour the proposal, but there is no reason why he should compromise either himself or his government.

#### § 175. *Ne varietur*.

Louis Philippe wrote to Guizot, July 24, 1846 :

“ Une lettre de vous à Bresson, qu’il lui serait enjoint de lire à sa Majesté, et dont il devrait lui demander de laisser entre ses mains une copie *ne varietur*, ”

i.e. from which no departure can be permitted. Again, an *acte authentique* is an instrument certified by a third authority who is competent for the purpose. It has a public and permanent character. It is perfect in itself, without ratification. It is inserted in the minutes of the notaries, *ne varietur*.<sup>3</sup>

The Final Protocol of the Locarno Conference, 1925, in reciting the various treaties and conventions prepared and initialled at that conference, continued :

“ Ces actes, dès à présent paraphés *ne varietur*, porteront la date de ce jour, les représentants des parties intéressées convenant de se rencontrer à Londres le 1<sup>er</sup> décembre prochain, pour procéder, au cours d’une même réunion, à la formalité de la signature des actes qui les concernent.”

Nevertheless some slight amendments in grammar and spelling were found necessary, and these were agreed to by the plenipotentiaries at the time of the signature of the instruments on December 1, 1925.

<sup>1</sup> de Martens-Geffken, i. 187.

<sup>3</sup> de Maulde-la-Clavière, ii. 3, 199.

<sup>2</sup> Pradier-Fodéré, i. 370.

§ 176. A condition *sine quâ non* denotes a condition that must be accepted, if an agreement is desired by the party to whom it is proposed.

§ 177. *Casus belli* and *Casus fœderis*. These terms appear to be sometimes confused.

The former signifies an act or proceeding of a provocative nature on the part of one Power which, in the opinion of the offended Power, justifies it in making or declaring war. Palmerston defined it in 1853 as "a case which would justify war."<sup>1</sup>

The latter is an offensive act or proceeding of one state towards another, or any occurrence bringing into existence the condition of things which entitles the latter to call upon its ally to fulfil the undertakings of the alliance existing between them, *i.e.* a case contemplated by the treaty of alliance.

At the Congress of Paris, April 15, 1856, the English, French and Austrian plenipotentiaries signed a convention by which a reciprocal engagement was entered into to regard as a *casus belli* any violation of the main treaty, and any attempt, no matter from what quarter it might be made, on the independence and integrity of the Ottoman empire; it also fixed the naval and military contingents to be mobilised in case this *casus fœderis* should arise.<sup>2</sup>

§ 178. There are certain French terms used in diplomacy for which it is not easy to find an exact rendering in English.

*Démarche* is defined by Littré as: "Ce qu'on fait pour la réussite de quelque chose," and one of the examples he gives is: "la démarche que l'Angleterre avait faite du côté de Rome." This "something" may have been what in English might be described as an offer, a suggestion, an advance, a demand, an attempt, a proposal, a protestation, a remonstrance, a request, an overture, a warning, a threat, a step, a measure—according to circumstances, and unless the translator happens to know what the circumstances were under which the *démarche* was made, he will be at a loss for a precise English equivalent.

§ 179. *Fin de non-recevoir* is originally a legal term. Littré explains *fin* or *fins* as

"toute espèce de demande, prétention ou exception présentée au tribunal par les parties. *Fin de non-recevoir*, refus d'admettre une action judiciaire, en prétendant, par un motif pris en dehors de la

<sup>1</sup> Ashley, *Life of Lord Palmerston*, i. 35.

<sup>2</sup> Ollivier, *L'Empire Libéral*, ii. 363.

demande elle-même et de son mal-fondé, que celui qui veut l'intenter n'est pas recevable dans sa demande.<sup>1</sup> Dans le langage général, fin de non-recevoir, refus pour des raisons extrinsèques. Répondre par des fins de non recevoir. Opposer des fins de non-recevoir."

Cussy says :

" Cette locution, en usage dans les tribunaux, signifie les exceptions diverses qui forment autant d'obstacles à ce que le juge saisi d'une instance puisse s'occuper, au moins immédiatement, de la connaissance et de l'appréciation de la demande ; c'est un moyen de droit *préjudiciel*, par lequel on repousse une action, sans qu'il soit nécessaire d'examiner le fond de la contestation."<sup>2</sup>

This latter explanation corresponds better to the notion conveyed when the expression is used to describe the diplomatic practice which consists in rejecting an official complaint or demand without examining into the merits.

" Evasive reply " may be sometimes the best rendering.

#### § 180. *Prendre Acte. Donner Acte.*

The legal definition of *acte* is " a declaration made before a court, whether spontaneously or in consequence of an order of a court, and which has been certified to have been made." In diplomacy it is applied to any document recording an international agreement by which an obligation is undertaken ; such as, for instance, the convention for the suspension of hostilities of April 23, 1814, signed between France and the four allied Great Powers.<sup>3</sup> " Instrument " is the proper English equivalent, though we sometimes find it rendered by " Act."

*Prendre acte* is to declare that one will avail one's self, should the necessity arise, of a declaration or admission made by the other party, without conceding that one is in any way bound by that declaration. " To take note of " is perhaps the English equivalent. Yet it may sometimes conveniently be rendered by " recognise " or " acknowledge."

" Mais les sagesse tardives ne suffisent point ; et même quand elles veulent être prudentes, l'esprit politique manque aux nations qui ne sont pas exercées à faire elles-mêmes leurs affaires et leur destinée. Dans le déplorable état où l'entreprise d'un égoïsme héroïque et chimérique avait jeté la France, il n'y avait évidemment qu'une conduite à tenir ; reconnaître Louis XVIII, prendre

<sup>1</sup> The nearest English legal equivalent is perhaps " demurrer," or " objection in point of law."

<sup>2</sup> *Dictionnaire du diplomate*, etc., s.v., 323.

<sup>3</sup> *Mémoires du Pr. de Talleyrand*, ii. 175, in the preamble.

acte de ses dispositions libérales et se concerter avec lui pour traiter avec les étrangers.”<sup>1</sup>

*Donner acte* is to give recognition to another party that he has performed a certain necessary act.

§ 181. *Donner la main* (in English, give the hand, German *Oberhand*) means to give the seat of honour, *i.e.* on the right hand of the host or diplomatic agent receiving a visit from a person of lower rank. The Elector Max Joseph of Bavaria was reported in 1765 to have bestowed this mark of deference on the Imperial Ambassador “which certainly no crowned head in Europe would do.”<sup>2</sup> In the instructions to Lord Gower, on his appointment as ambassador to Paris in 1790, he is directed to act in accordance with the Order in Council of August 26, 1668, and “to take the hand of envoys” in his own house, *i.e.* to place them on his left hand.<sup>3</sup> See also on this point § 459.

§ 182. *Dénoncer un traité* is to give notice of intention to terminate a treaty, to the other contracting party or parties. “Denounce a treaty” is not good English.

§ 183. *National*. This French term, of which the convenience must be admitted, corresponds in English to “subject or citizen.” A similar convenience attaches to the term *ressortissant*, one who is subject to a particular jurisdiction, which comprises both citizens of the French Republic and persons under its protection, whether as subjects of a protected state, such as Tunis, or the natives of Morocco, who, in accordance with former treaty stipulations existing with that country, were entitled to French protection as being *semsars* or brokers, and *mokhalata* or employés of French commercial houses.<sup>4</sup>

<sup>1</sup> Guizot, *Mémoires, etc.*, i. 95.

<sup>2</sup> Temperley, *Frederick the Great and Kaiser Joseph*, 67.

<sup>3</sup> Browning, *The Despatches of Earl Gower*, 2.

<sup>4</sup> See also *Annual Digest, etc.* (1927-8), Case No. 24.

## BOOK II

### DIPLOMATIC AGENTS IN GENERAL

#### CHAPTER XI

##### DIPLOMATIC AGENTS, AND THE RIGHT OF LEGATION

§ 184. *Diplomatic agents* is a general term denoting the persons who carry on the political relations of the states which they represent, in conjunction with the minister for foreign affairs of the country where they are appointed to reside. They are also styled “ministres publics” in French. It is not meant that their official intercourse is limited to the head of the foreign department. Matters which come under the heading of current business, or the details of diplomatic negotiations, of which the principles have already been settled, may be and usually are discussed with one of the minister’s immediate subordinates. Questions affecting the vital relations of the two nations will, however, be treated with the head of the office.

§ 185. The duty of the diplomatic agent is to watch over the maintenance of good relations, to protect the interests of his countrymen, and to report to his government on all matters of importance, without being always charged with the conduct of a specific negotiation. At the more important posts, the agent is assisted in furnishing reports of a special character by military, naval, air and commercial attachés.

§ 186. In addition to the head of the permanent mission, other diplomatic agents are sometimes accredited for special purposes of a ceremonial character, to represent the sovereign or state at a coronation or other state ceremony, or it may be to invest a foreign sovereign with a high decoration.

§ 187. Every recognised independent state is held to be entitled to send diplomatic agents to represent its interests in

other states, and reciprocally to receive such agents, but there is no obligation in international law to exercise either right.<sup>1</sup>

§ 188. In treaties with some Oriental states the right to have a diplomatic representative has been expressly stipulated, as with China, for instance, and formerly with Japan. This practice, however, dates from an earlier period. In 1614 it was provided by a treaty between Sweden and Holland that the two states should mutually accredit resident envoys. Holland had a similar agreement, also of 1614, with Brandenburg, Anhalt, Baden, Oettingen and Württemberg. The Treaty of Belgrade, 1739, between Russia and the Porte, provided that the former might have a resident minister at Constantinople, of whatever category the Russian sovereign might determine; and by Article V of the Treaty of Kutchuk-Kainardji, 1774 (January 10, 1775), it was settled that the Russian representative should always be of the second class, taking rank immediately after the Imperial German minister; but if the latter were of a higher or lower category, then the Russian to have precedence immediately after the Dutch, or, in his absence, after the Venetian ambassador.<sup>2</sup> Great Britain, up to December 1914, maintained no regular diplomatic intercourse with the Holy See; formerly, before the annexation of Rome to the Kingdom of Italy, a secretary of the British legation at Florence usually resided at Rome as the unofficial medium of official communication. Prussia had a legation at Rome, while not receiving a *nuncio* at Berlin; so also Russia.

§ 189. Within recent years a number of treaties have been concluded, notably by Turkey and the Union of Soviet Socialist Republics, which by their terms provide for the establishment of diplomatic relations and treatment of diplomatic agents. The Treaty of Friendship between Turkey and Poland of July 23, 1923, provides:

“Les Hautes Parties Contractantes sont d'accord pour rétablir les relations diplomatiques entre les deux États conformément aux principes du droit des gens. Elles conviennent que les ministres, envoyés et agents diplomatiques de chacune d'elles jouiront à charge de réciprocité dans le territoire de l'autre, des privilèges, honneurs, immunités et exemptions accordés à ceux de la nation la plus favorisée.”<sup>3</sup>

§ 190. Similar articles appear in treaties concluded by Turkey with Austria, Czechoslovakia, Germany, Hungary,

<sup>1</sup> See also Oppenheim, i. § 360.

<sup>2</sup> Koch and Schoell, *Histoire abrégée des Traités de Paix*, etc., xiv.

<sup>3</sup> *Br. and For. State Papers*, cxviii. 974.

the Netherlands, Norway, Spain, Sweden and Yugoslavia, but in these the latter part of the article is modified to read "le traitement consacré par les principes généraux du droit international public général."

§ 191. By the Treaty of Rapallo, April 16, 1922, Germany resumed diplomatic relations with Russia. Treaties have since been concluded by the Soviet Union with various countries to the same effect. The Convention of Friendship and Economic Co-operation of January 20, 1925, between Japan and the Union of Soviet Socialist Republics, *e.g.*, says :

"The High Contracting Parties agree that, with the coming into force of the present convention, diplomatic and consular relations shall be established between them."<sup>1</sup>

The Pan-American Convention, signed at Havana on February 20, 1928, provides in Article 1 : "States have the right of being represented before each other through diplomatic officers."

§ 192. Whether semi-sovereign states possess the right or not is determined by the form of the tie between them and the suzerain power, sometimes by treaty. The right to send diplomatic agents is not co-extensive with that of concluding treaties. Thus Egypt, as long as the Turkish suzerainty lasted, was able to conclude commercial treaties with foreign states, but was not empowered to maintain permanent missions.

§ 193. In monarchical states the sovereign has the right of making appointments. Generally speaking, this right is defined by the constitution. Thus, in the French Republic it is exercised by the President ; in the United States by the President in conjunction with the Senate, whose consent is necessary to the nominations sent to it by the former.

§ 194. In the case of a regency, the diplomatic agent is nevertheless accredited in the name of the sovereign, whether he be a minor or be prevented by infirmity from discharging his functions. During the minority of Louis XV, the Duke of Orleans being regent, Cardinal Dubois negotiated the Triple Alliance of The Hague in 1717, in virtue of credentials, full powers and instructions made out in the name of the King. In England, during the periods when George III was incapacitated for the transaction of affairs, the right of sending embassies was vested in the Prince of Wales. The Republic of Poland, during a vacancy of the elective throne, exercised the right of embassy.<sup>2</sup>

<sup>1</sup> *Br. and For. State Papers.*, cxxii. 895.

<sup>2</sup> Phillimore, ii. 163-4.

§ 195. On the occasion of the serious illness of King George V in 1928 His Majesty signed Letters Patent authorising the issue of a Commission under the Great Seal creating a Council of State, composed of the Queen, Prince of Wales, Duke of York, Archbishop of Canterbury and the Prime Minister, who were authorised to sign documents.<sup>1</sup> Formal documents such as the credentials of ambassadors and ministers, full powers and ratifications of treaties were signed on His Majesty's behalf by the Regents.

§ 196. The maxim *delegatus non potest delegare* was formerly subject to certain exceptions. Thus, after the death of Gustavus Adolphus at Lützen in 1632 the Senate at Stockholm delegated the whole government to the Chancellor Oxenstierna. Grotius, nominated by him as ambassador to France, had credentials in the Chancellor's name. He was received as the ambassador of Sweden, in virtue of the procuration of the Senate, and not merely as the representative of the Chancellor who had appointed him.

Phillimore says that the Viceroy of a province, especially of a distant province, has always been held, *ex necessitate rei*, to possess the right of embassy; and he adds that during the period when Spain governed Naples by a viceroy, Milan by a governor, and the Spanish Netherlands by a governor-general, the right to confer upon others the *jus legationis* was frequently exercised by these high delegates of their sovereign, generally without controversy. But in 1646 the French ambassador in Switzerland persuaded the Cantons to refuse an audience at their general assembly to the ambassador of the governor of Milan, on the ground that this ambassador had no credentials from the Crown of Spain. During the time that the Netherlands (now Belgium) were a possession of the House of Austria, foreign diplomatic agents were sent to reside at Brussels, the seat of the governor-general's authority. The British Governor-General of India, the Dutch Governor of Java, and formerly the Spanish Governor of the Philippines are other examples. The Dutch, French, and British East India Companies often possessed this power, but this cannot be presumed; it must have been conferred by the special and express grant of their respective governments.<sup>2</sup>

§ 197. A monarch who is a prisoner-of-war cannot accredit diplomatic agents<sup>3</sup>; nor a monarch who has abdicated, or has been deposed.

<sup>1</sup> Keith, *British Constitutional Law*, 35.

<sup>2</sup> Phillimore, ii. 164-6.

<sup>3</sup> G. F. de Martens, *Précis du Droit des Gens*, ii. 40.

§ 198. When a civil war or a revolution breaks out, agents despatched to foreign countries by the opponents of the hitherto constituted government ought not to be officially received until the new state of things has assumed a permanent character and given rise to the formation of a new *de facto* government. The fact that a party in a state, during a civil war, has been recognised as a belligerent, conveys no right to be diplomatically represented abroad. But foreign states may negotiate with the agents of such a belligerent informally, to provide for the safety of their subjects and of the property of their subjects resident within the territory under the sway of such a party.<sup>1</sup> During the continuance of a civil war or revolution the diplomatist on the spot may often have to intervene on behalf of his own countrymen with the insurgents in possession, but he will do this personally and unofficially until his government recognises the new power which has been set up, and, if necessary, sends him new credentials. As long as its recognition does not take place, the diplomatic agent previously accredited continues to represent the head of the state which appointed him. In 1861, Great Britain, having recognised the Kingdom of Italy, which had annexed the Neapolitan dominions, intimated to the chargé d'affaires of Naples that he could no longer be accredited as a representative of the King of the Two Sicilies.<sup>2</sup> In 1871 Count Bismarck insisted that, in order that the Government of National Defence should be recognised as having the right to represent France diplomatically, it must be recognised by the French nation. The right may sometimes be doubtful or disputed, *e.g.* when a sovereign has assumed a title which is not as yet recognised by other Powers. On the occasion of the coronation of King William I, Prussia not having recognised the Kingdom of Italy, it was doubtful whether the King of Italy could send an ambassador to attend the ceremony. The difficulty was overcome by appointing General de la Rocca ambassador of King Victor Emmanuel, without specifying the country of which he was King.

§ 199. There is no fixed method of according recognition to a new government which has assumed office as a result of a revolutionary outbreak. Any form of notification suffices for the purpose or any act on the part of a state which is consistent only with such recognition.

§ 200. In the case of the 1910 revolution in Portugal, official recognition was delayed by the British Government

<sup>1</sup> Oppenheim, i. § 362.

<sup>2</sup> de Martens-Geffken, i. 39.

until the new republic had been confirmed by a general election, and until certain alterations, sufficient to protect British church property in Portugal, had been made in the Constitution. Recognition was accorded jointly with the Governments of Spain, Germany, Austria and Italy, and was expressed in notes stating that, in view of the fact that the Portuguese Constitution had been voted, the respective governments were glad to join in the recognition of the republic.

§ 201. In 1924, following the plebiscite which resulted in favour of a republican form of government in Greece, the British Government accepted the verdict as representing the wishes of the Greek people and formally recognised the régime thus established.

§ 202. The British note of February 1, 1924, to the Soviet Government stated that His Majesty's Government recognise the Union of Socialist Soviet Republics as the *de jure* rulers of those territories of the old Russian Empire which acknowledge their authority.

§ 203. In the case of revolutionary changes of government which have taken place in South American countries within recent years, viz. : Chile, Ecuador (1925), Peru (1930), the Argentine Republic (1930), and Brazil (1930), the British representative has been instructed to inform the government concerned that the British Government considered that diplomatic relations between the two countries were in no way affected by the change of government.

§ 204. On the occasion, in April 1931, of the revolution in Spain and the departure of the King of Spain from that country the governments of most foreign states, including those of Great Britain and the British Dominions, forthwith recognised the new régime. The former Spanish ambassador at London, the Marquis de Merry del Val, having resigned, a chargé d'affaires *ad interim* was appointed by the provisional government, and in May Señor Pérez de Ayala took up his appointment at London as ambassador extraordinary and plenipotentiary from the provisional government, being received in that capacity, and his name placed on the diplomatic list. The British ambassador at Madrid was not, however, furnished with new credentials pending the confirmation by popular vote of the new régime which had been set up in Spain, and the election of a constitutional president of the republic.

§ 205. The right of the Holy See to diplomatic representa-

tion was not affected by the annexation of the States of the Church to the Kingdom of Italy.

By the Treaty of February 11, 1929, between Italy and the Holy See, Italy recognises the full ownership and the exclusive and absolute dominion and sovereign jurisdiction of the Holy See over the Vatican City, all persons having permanent residence there being subject to the sovereignty of the Holy See. Under Article 12 of the treaty Italy also recognises the right of the Holy See to active and passive legation, in accordance with the general rules of international law, envoys of foreign governments continuing to enjoy in the Kingdom all the privileges and immunities appertaining to diplomatic agents, while their headquarters may remain in Italian territories and enjoy all immunities due to them in accordance with international law ; an Italian ambassador being accredited to the Holy See and a Papal nuncio to Italy, the latter being the *doyen* of the diplomatic corps in accordance with the customary right recognised by the Congress of Vienna. (See also § 436.)

§ 206. It is a general practice to have only one permanent diplomatic agent at each capital.

The counsellors of the British embassies at Paris and Washington are specially accredited as envoys extraordinary and ministers plenipotentiary. Envoys extraordinary and ministers plenipotentiary are also accredited at certain capitals in respect of the Dominion of Canada, the Union of South Africa and the Irish Free State. (See § 775.)

§ 207. In time of war the representative of a neutral friendly Power commonly undertakes the protection of the subjects of one belligerent in the dominions of the other belligerent, so far as is permitted by the state to which he is accredited, and, of course, with the sanction of his own government.

§ 208. There is no objection in principle to one and the same person being accredited to more than one country. Indeed, this is often done where several minor states lie adjacent to each other, or when it is desired for reasons of public economy to limit expenditure on diplomatic missions.

The British ambassador at Buenos Aires is accredited also to Paraguay as minister plenipotentiary. The British envoy at Panama is accredited in the same capacity to Costa Rica ; the British envoy in Latvia also to Estonia and Lithuania ; and the British envoy at Guatemala also to Honduras, Nicaragua and Salvador.

§ 209. What class of agents shall be accredited is a matter for arrangement between the governments concerned, the usual practice being to exchange agents of the same class. France, however, appoints an ambassador to Berne, while the Swiss Confederation sends a minister to Paris. Generally, however, only the principal states are represented by ambassadors, though up to 1893 the United States made it a rule to appoint agents of not higher rank than envoy. At the beginning of Queen Victoria's reign Great Britain had ambassadors at Vienna, Paris, St. Petersburg and Constantinople. Vienna was reduced in 1835, and from 1844 to 1860 the post at St. Petersburg was occupied by an envoy and minister. The legation at Vienna was raised to an embassy in 1860 (but is at the present time again a legation), that at Berlin in 1862, at Rome in 1876, at Madrid in 1887, at Washington in 1893, at Tokio in 1905, at Brussels in 1919, at Rio de Janeiro in 1919, at Lisbon in 1924, at Buenos Aires in 1927, at Warsaw in 1929, and at Santiago in 1930.

In all these cases the change of status took place by mutual consent and the British diplomatic agent became ambassador. Similar changes have taken place all over the world during the last century, *chargés d'affaires* being converted into ministers resident and ministers resident into envoys extraordinary and ministers plenipotentiary, as a matter of international compliment and in recognition of the growing importance of the political and commercial relations of states.

§ 210. The continuous residence of an embassy is, to speak strictly, a matter of *comity*, and not of *strict right*.

Nevertheless, so long a custom and so universal a consent have incorporated this permission of strict residence into the practice of nations, that its refusal would require unanswerable reasons for its justification.

Such refusal was the ancient practice of Far Eastern nations towards European states up to about the middle of the nineteenth century, and in the case of Corea until 1883. And, more recently, diplomatic representation as between Soviet Russia and many countries was suspended, and still is in the case of the United States of America and certain other countries.

§ 211. As apart from diplomatic agents formally accredited to the heads of foreign states, representatives are often appointed to attend congresses or conferences for the discussion and settlement of matters of international concern, and to negotiate and sign treaties in regard to such matters ; or, it

may be, to revise treaties which have been formerly concluded between the states concerned. These are commonly furnished with full powers from their sovereign or government for the purpose. (See §§ 365, 539.)

Commissioners are also sometimes appointed to regulate boundary questions or to transact other matters requiring adjustment which are outside the ordinary scope of the permanent diplomatic representative. (See §§ 366, 369.)

## CHAPTER XII

### THE SELECTION OF DIPLOMATIC AGENTS

§ 212. IN theory the selection of heads of missions will be determined with reference to the absolute fitness of the man for the particular post. Most European states confine diplomatic appointments, at least to ranks below that of ambassador, to a close service consisting of trained men <sup>1</sup> who have begun at the lowest step of the ladder and risen gradually ; a similar practice now extends to various American countries. In some the diplomatic service is amalgamated with that of the Foreign Office, and sometimes also with the higher ranks of the consular service. In Great Britain heads of missions are usually taken from one of the two former, seldom from the last ; sometimes, but rarely, they have previously been politicians ; formerly they belonged to the political party in power, and usually resigned on a change of government. The same combination of foreign office and diplomatic service apparently existed in Austria-Hungary, France, Germany, Italy, Russia and Spain. In all of those countries the interchange of the office of minister for foreign affairs with that of ambassador was not infrequent, but in Great Britain no instance of the kind has occurred, at least in recent times, though the special missions to the United States of the late Earl of Balfour in 1917, of Viscount Reading in 1918, and of Viscount Grey of Fallodon in 1919, may be mentioned.

In 1754 Sir Thomas Robinson (afterwards Lord Grantham), who had been minister at Vienna, was made Secretary of State for the Southern Department and leader of the House of Commons, in which position he achieved no marked distinction. His son, the second Lord Grantham, was ambassador at Madrid from 1771 to 1779, and Secretary of State for Foreign Affairs for a few months in 1782-3. The appointment of the fifth Duke of Leeds is scarcely a case in point, nor is that of George Canning, of Marquess Wellesley, nor of the second Earl Granville, all of whom were in real fact politicians. The fourth Earl of Clarendon had been envoy at Madrid from 1833 to 1839, but did not go to the Foreign

<sup>1</sup> On the question of women as diplomatic agents see Oppenheim, i. § 370.

Office till 1853. The first Earl of Kimberley was envoy at St. Petersburg under his earlier title of Lord Wodehouse from 1856 to 1858, but did not become Secretary of State till 1894.

§ 213. If the diplomatist suggested for appointment as ambassador or envoy is married, the social gifts, character, religion, past history, or original nationality of his wife may be an important ingredient in the determination of his appointment.

§ 214. The regulations for the British diplomatic service say :

“ The Secretary of State reserves to himself the power to recommend to the King the name of any person, even though not in the diplomatic service, for the higher and more responsible posts in it ; and generally, in regard to all appointments whatever in the diplomatic service, the Secretary of State will not be restricted by claims founded on seniority, or membership of the service, from making any such selection as on his own responsibility he may deem right.”<sup>1</sup>

§ 215. In the United States Article II, sec. 2, 2, of the Constitution declares that “ the President shall nominate and, by and with the advice of the Senate, shall appoint ambassadors, other public ministers and consuls.” Diplomatic appointments to missions of all classes were formerly conferred almost without exception on political supporters of the party whose nominee had been elected president, but in 1924 a career service was established, from which a number of appointments has since been made. A feature is the interchangeability of the diplomatic and consular services. Heads of missions, however, it is understood, still formally send in their resignations when a new president is elected.

In Japan there have been several instances of the interchange of minister for foreign affairs and ambassador.

§ 216. In the Union of Soviet Socialist Republics appointments to heads of missions are apparently made on political grounds. By a decree of May 22-June 4, 1918, the titles of ambassador, envoy, etc., were abolished, and a single class created called *Représentants Plénipotentiaires*. But the need of indicating the rank of these agents when accredited to foreign states has since compelled a modification, and their credentials, while styling them *Représentants Plénipotentiaires*, add to this designation “ à titre d’ambassadeur extraordinaire et plénipotentiaire ” or other description, according to the rank to be assigned to them in the country in which they are to reside.

<sup>1</sup> *Foreign Office List* (1932), 119.

§ 217. In 1914 a British Royal Commission on the Civil Service presented a report containing a series of recommendations with respect to the organisation and recruitment of the diplomatic service. One was that the diplomatic establishment of the Foreign Office and the Diplomatic Corps serving abroad should be amalgamated, up to and including the grades of assistant under-secretary of state and minister of the lowest grade. Another that the existing property qualification (the possession of a private income of £400 a year) be abolished, and that members of the service employed abroad should receive a suitable foreign allowance. These recommendations were accepted in principle, and at the present time the regulations for admission to the Diplomatic Service and Foreign Office prescribe :

“ Admission to the Diplomatic Service and the Foreign Office is by open competition. The examination is the same as that for Class I of the (general) Civil Service, with special arrangements to ensure a thorough knowledge of French and German and some other modern language. Candidates desiring to be appointed to the combined Service will first be required to appear before a Board of Selection, appointed by the Secretary of State, which will decide whether they possess suitable qualifications for entry into the Foreign Office and Diplomatic Service. No assurance as to the possession of private means will be required of candidates. All members of the combined Service will be liable for service abroad.”<sup>1</sup>

§ 218. One would be disposed to say that some, if not all, of the following are necessary qualifications for the diplomatic career.

Good temper, good health and good looks. Rather more than average intelligence, though brilliant genius is not necessary. A straightforward character, devoid of selfish ambition. A mind trained by the study of the best literature, and by that of history. Capacity to judge of evidence. In short, the candidate must be *an educated gentleman*. These points cannot be ascertained by means of written examinations. Those can only afford evidence of knowledge already acquired ; they do not reveal the essential ingredients of a character. At some posts it is useful to have had a legal training, particularly where the minister for foreign affairs is likely to be a lawyer. Some private income, even though the government should give a special foreign service allowance, is very desirable in the lower grades of the diplomatic service, and the higher the grade the more of it the better.

<sup>1</sup> *Foreign Office List* (1932), 116.

§ 219. In most countries it is an essential requirement for entry into the diplomatic service that the candidate should be a subject or citizen of the country.

In Great Britain candidates must be natural-born British subjects and born within the United Kingdom or in one of the self-governing Dominions of parents also born within those territories, except when the circumstances are such as to justify a departure from the general rule, in which case they can be allowed to compete by special permission of the Secretary of State for Foreign Affairs, provided they fulfil the conditions of the rule in respect of nationality prescribed for candidates for admission to His Majesty's Civil Service as a whole, viz.:

Every candidate must be a natural-born British subject, the child of a person who is, or was at the time of his death, a British subject. Provided that exception may be made:

- (a) in the case of candidates serving in a civil situation to which they were admitted with the certificate of the Civil Service Commissioners;
- (b) in the case of natural-born British subjects who served in His Majesty's Armed Forces in the Great War between August 4, 1914, and November 11, 1918;
- (c) in the case of natural-born British subjects who have satisfactorily completed a period of not less than five years' service on full pay in His Majesty's Regular Forces.

Provided also that if the Civil Service Commissioners are satisfied, in the case of any candidate who is a British subject but does not fulfil all the requirements of the rule as to nationality and descent, that the candidate is so closely connected by ancestry and upbringing with His Majesty's dominions that an exception may properly be made to that rule, they may accept such candidate as eligible provided that this discretion shall not be exercisable unless (a) the father or paternal grandfather of the candidate was a natural-born British subject, and (b) neither the father nor the paternal grandfather had acquired any other nationality by naturalisation or by any other voluntary or formal act.

§ 220. In the British diplomatic service the age of retirement was formerly fixed at seventy years, though cases occurred in which, for special reasons, it was thought desirable to extend the period of service. But the Superannuation (Diplomatic Service) Act, 1929, now applies to members of that service the provisions of the Superannuation Acts governing civil servants in general (subject to certain modifications as regards pensions). The French rule is retirement at the age of sixty, which may be extended to sixty-five. Many states have no age limit.

§ 221. The qualifications and characteristics of the perfect diplomatist have been discussed in Chapter IX. Certain other observations may be cited:

The attempt to reduce to rules the art of negotiating is as vain and futile as the attempt to teach the art of social intercourse. In addition to knowledge of affairs in general and comprehension of the interests of his own country in particular, the distinguishing characteristics of a successful negotiator, such as knowledge of men, which enables one to interpret looks and glances, an elasticity of demeanour which overcomes the weak man by earnestness and the strong man by gentleness, readiness to understand the opponent's point of view and skill in refuting his objections—all these are qualities which can be acquired only by natural disposition, social intercourse and practical acquaintance with affairs.<sup>1</sup>

§ 222. In a recent work,<sup>2</sup> the essential qualities of the perfect diplomatist are thus set forth : He is conciliatory and firm ; he eludes difficulties which cannot immediately be overcome only in order to obviate them in more favourable conditions ; he is courteous and unhurried ; he easily detects insincerity, not always discernible to those who are themselves sincere ; he has a penetrating intellect and a subtle mind, combined with a keen sense of honour ; he has an intuitive sense of fitness and is adaptable ; he is at home in any society and is equally effective in the chanceries of the old diplomacy or on the platforms of the new.

§ 223. Ch. de Martens said :

“ Pour que l'agent diplomatique inspire la confiance si nécessaire au succès des affaires, il faut que, sans abandon affecté, son caractère fasse croire à sa franchise. Le soupçon de finesse provoque la méfiance, et la marche des affaires en souffre. Mais la loyauté n'exclut pas la prudence, et l'on peut répudier la ruse sans renoncer à la circonspection.”<sup>3</sup>

§ 224. A well-known witticism of Sir Henry Wotton has been made use of by ill-natured persons as the foundation of a charge that the method principally employed by diplomatists is the perversion of truth. Izaak Walton, in the life prefixed to the *Reliquiæ Wottonianæ*, reports :

“ At his first going ambassador into *Italy*, as he passed through Germany, he stayed some days at *Augusta* [Augsburg], where having been in his former Travels, well-known by many of the best note for Learning and Ingeniousness (those that are esteemed the *Vertuosi* of that Nation) with whom he passing an Evening in Merriments, was requested by *Christopher Flecamore* <sup>4</sup> to write some

<sup>1</sup> Schmalz ; cited by Schmelzing, ii. 105.

<sup>2</sup> Kennedy, *Old Diplomacy and New*, 366.

<sup>3</sup> de Martens-Geffken, 152.

<sup>4</sup> John Christopher Fleckammer or Fleckammer. See Logan Pearsall Smith, *Life and Letters of Sir H. Wotton*, i. 49 n., 127 n. ; ii. 10. Also an article by E. Nys in *Revue de Droit International*, xxi. 388.

Sentence in his *Albo* (a Book of white Paper, which for that purpose many of the *German* Gentry usually carry about them) and Sir *Henry Wotton* consenting to the motion, took an occasion from some accidental discourse of the present Company, to write a pleasant definition of an Ambassadour, in these very words :

*Legatus est vir bonus peregrè missus ad mentiendum Reipublicæ causâ.*

Which Sir *Henry Wotton* could have been content should have been thus Englished :

*An Ambassador is an honest man, sent to lie abroad for the good of his Country.*

But the word for *lye* (being the hinge upon which the Conceit was to turn) was not so expressed in Latine, as would admit (in the hands of an Enemy especially) so fair a construction as Sir *Henry* thought in *English*. Yet as it was, it slept quietly among other Sentences in this *Albo*, almost *eight years*, till by accident it fell into the hands of *Jasper Scioppius*, a Romanist, a man of a restless spirit, and a malicious Pen : who with Books against King *James*, Prints this as a Principle of that Religion professed by the King, and his Ambassadour Sir *Henry Wotton*, then at *Venice* : and in *Venice* it was presently written after in several Glass-windows, and spitefully declared to be Sir *Henry Wotton's*.

This coming to the knowledge of King *James*, he apprehended it to be such an oversight, such a weakness, or worse in Sir *Henry Wotton* as caused the King to express much wrath against him : and this caused Sir *Henry Wotton* to write two Apologies, one to *Velserus* (one of the Chiefs of *Augusta*) in the universal Language, which he caused to be Printed, and given, and scattered in the most remarkable places both of *Germany* and *Italy*, as an Antidote against the venomous [*sic*] Books of *Scioppius* ; and another Apology to King *James* : which were both so ingenious, so clear, and so choicely Eloquent, that his Majesty (who was a pure judge of it) could not forbear, at the receipt thereof, to declare publicly, *That Sir Henry Wotton had commuted sufficiently for a greater offence*” [4th edit. 1685].

In the letter to Mark Welser, Wotton calls his “ pleasant definition ”

“ iocosam Legati definitionem, quam iam ante octennium istâc transiens apud amicum virum Christophorum Fleckamerum fortè posueram in *Albo* Amicorum more Teutonico, his ipsis verbis ; ‘ Legatus est vir bonus, peregrè missus ad mentiendum reipublicæ causâ.’ Definitio adeò fortasse catholica, ut complecti possit etiam Legatos à latere.” <sup>5</sup>

This seems a sufficient exoneration as far as Sir *Henry Wotton* is concerned.

<sup>1</sup> L. P. Smith, *op. cit.*, ii. 9, and *Reliquiæ Wottonianæ* (4th ed.).

## CHAPTER XIII

### PERSONA GRATA

§ 225. EVERY state has the right of refusing to accept a particular diplomatic agent, whether on the ground of his personal character or of his previous record, as, for instance, if he is known to have entertained sentiments of enmity toward the state to which it is proposed to accredit him. A diplomatic agent may also be declined because of the character with which it is proposed to invest him, or, as it is tersely expressed in Latin, *ex eo ob quod mittitur*. If the Pope had announced his intention of sending a legate or *nuncio* to certain Protestant countries it is probable that such a representative would not have been received. The Ottoman Porte for a long time declined to exchange ambassadors with the United States, until the latter finally despatched a squadron of ships of war to Constantinople, and at the cannon's mouth, as it were, extracted a promise to fall in with the proposed arrangement.<sup>1</sup>

§ 226. *Agréation*.—To avoid unpleasantness arising from a refusal, it is the usual practice to submit the name of the person whom it is desired to appoint, beforehand, to the head of the state to whom he is to be accredited. This is done confidentially as a rule, the channel generally employed being the retiring diplomatic agent of the country which appoints, or the chargé d'affaires *ad interim*. Sometimes it is done by the minister for foreign affairs addressing himself to the diplomatic representative of the state to which the diplomatist is to be accredited. When the Pope was about to appoint a *nuncio* or legate to Spain (formerly also to the courts of Austria-Hungary, France and Portugal) he submitted a list of three names, called a *terna*, to the sovereign, who then was at liberty to make his choice. If there existed no special reasons for exercising the power of choosing, it was usual to take the name that stood first. In 1819, Dessolles, the French minister for foreign affairs, wrote to Nesselrode giving a list of four men, either of whom the king would be willing to

<sup>1</sup> Foster, *Practice of Diplomacy*, 31.

appoint ambassador at St. Petersburg, recommending particularly the first on the list. Alexander, however, chose La Ferronnays, who was the second.<sup>1</sup>

§ 227. It is a matter of dispute whether a refusal must be accompanied by a statement of the grounds on which it is made, but if in such a case the reasons are asked for, and they are not given, or if it appears to the government whose candidate has been refused that the grounds alleged are inadequate, that Power may refuse to make an appointment, and prefer to leave its diplomatic representation in the hands of a chargé d'affaires.

Nevertheless the Pan-American Convention of February 20, 1928, signed at Havana, lays down for the signatory states the following rules : " Article 8.—No state may accredit its diplomatic officers to other states without previous agreement with the latter. States may decline to receive an officer from another, or, having already accepted him, may request his recall, without being obliged to state the reasons for such a decision."

§ 228. The books give several instances of refusals, and others have occurred which have not been made public. One of the best known is that of the refusal of the Emperor Nicholas of Russia to receive Sir Stratford Canning in 1832, on the ostensible ground that the appointment was made without previous notice having been given, since it was only ten days after it had been officially gazetted that Palmerston mentioned it to the Russian ambassador in London. It has been suggested that the Emperor's objection to Sir Stratford Canning was on personal grounds, and though the British Government maintained that a government was perfectly free in the choice of its representatives at foreign courts, the Emperor refused to receive him, and the ordinary relations between the two courts were only resumed in 1835, when Lord Durham was appointed ambassador.

§ 229. In the past refusal to receive an envoy might occur on such grounds as the following : Sweden, in 1757, refused to accept the British envoy, Goodrich, because after his appointment he had visited a prince with whom Sweden was at war ; Great Britain consequently broke off diplomatic relations with Sweden.<sup>2</sup> In 1820, the King of Sardinia refused to receive the Prussian envoy, Baron von Martens, because he had married the daughter of a regicide. In 1847 the King of Hanover refused to accept Graf von Westphalen because he was a Roman Catholic.

<sup>1</sup> F. de Martens, *Recueil des traités, etc.*, xiv, 415.

<sup>2</sup> Schmalz, *Europäisches Völkerrecht*, 87, etc.

§ 230. At the present day the practice of making inquiry beforehand is recognised by most states as thoroughly well established, with the possible exception of the United States, which observes the practice of inquiring in advance as to the acceptability of persons nominated as ambassadors, but, at any rate until recently, adhered to the rule that this was unnecessary in respect of envoys and diplomatic representatives of a lower grade. It would seem, however, that this rule has of late undergone modification, for Article 8 of the Pan-American Convention of February 20, 1928, referred to above, between the United States and most American countries, prescribes that no state may accredit its diplomatic officers to other states without previous agreement with the latter.

§ 231. In 1885 Mr. Keiley was appointed United States minister at Rome. The Italian Government asked that another choice might be made, without, however, assigning any reason. But it was evident that the ground of the refusal to receive him was a speech made by Mr. Keiley at a public meeting of Roman Catholics, at which a protest was made against the annexation of the Papal States to the Kingdom of Italy. Mr. Bayard, the United States Secretary of State, recognised "the full and independent right" of the King of Italy "to decide the question of personal acceptability to him of an envoy," and Mr. Keiley, on being made acquainted with the refusal of the Italian Government, resigned his commission.

§ 232. Mr. Keiley was thereupon appointed to Vienna, and the Austro-Hungarian minister at Washington was instructed to the effect that since, as at Rome, scruples prevailed against this choice, he was to direct the attention of the United States Government, in the most friendly way, to the generally existing diplomatic practice to ask, previously to any nomination of a foreign minister, the consent (*agrément*) of the government to which he is to be accredited. It was added that "the position of a foreign envoy wedded to a Jewess by civil marriage would be untenable and intolerable in Vienna." This afforded Mr. Bayard the opportunity of asserting that the only reason given was the allegation as to Mrs. Keiley's religion, which he indignantly repudiated as sufficient ground for the refusal, while recognising

"the undoubted right of every government to decide for itself whether the individual presented as the envoy of another state is or is not an acceptable person, and, in the exercise of its own high and friendly discretion, to receive or not the person so presented."

Later, he discussed the question whether it was necessary previously to ask for the consent of the government to whom the minister was to be accredited ; there was no instance of this having been done by the United States, and the reason was that frequent elections at regular intervals might render it difficult to procure the consent of a foreign government to the appointment of agents whose views were in harmony with the latest expression of public opinion, if the new government should happen to have superseded one whose policy was more in accord with that of the foreign government concerned. Subsequently the Austro-Hungarian Government based their refusal on the ground that the Italian Government had objected to Mr. Keiley, and that its views had found earnest expression at Vienna since the President had nominated him to Austria-Hungary ; the fact that his wife was a Jewess did not influence the judgment of the government, but the latter could not prescribe social usage, which might be unpleasant in that regard. The main reason for objection was not the action of Italy, but the public utterances of Mr. Keiley, which were of a character not agreeable to the Austro-Hungarian Government. Finally the latter definitely refused to receive Mr. Keiley, who thereupon sent in his resignation. The President declined to make a fresh nomination and the legation was left in the hands of a secretary as chargé d'affaires.<sup>1</sup>

§ 233. In 1891 the United States appointed Mr. H. W. Blair minister to China. When he was on his way thither, the Chinese Foreign Office telegraphed their objection to the appointment on the ground that in 1882 and 1888 he had "bitterly abused China in the Senate" and "was conspicuous in helping to pass the oppressive Exclusion Act." In response to a request that they would consent to reopen the case the Chinese Foreign Office said "Mr. Blair is not popularly regarded in China," but that if the President could do anything to repeal the Exclusion Law of 1888 "the situation in China would be much changed, and then it would not make much difference what Mr. Blair has said, and he would be well received if the President asked for it." After the lapse of nearly three months, the President wrote to Mr. Blair accepting his resignation. At the same time, the minister then in China was instructed to deny the sufficiency of the allegations made in respect of the views concerning the Chinese people which were stated to have been entertained and uttered in legislative debate by Mr. Blair :

<sup>1</sup> *Foreign Relations of the United States*, 1886.

"If Mr. Blair may not be received as minister while that law [of 1888] remains unrepealed, and because of its existence as a law, it is not easy to reconcile that position with the continued friendly reception of the present minister of the United States at Peking. In this aspect, as in every other aspect, the position assumed by China is incongruous and inadmissible."

There was no interruption of the diplomatic representation at Peking.<sup>1</sup>

§ 234. It is seldom that the national of a state is employed as the envoy of a foreign state in his own country. Before he can appear in that capacity he must apply for the approval of his own sovereign or government.

§ 235. In France it appears to have been for some time settled as a constitutional maxim that French citizens are not admissible as foreign ambassadors or ministers at Paris. And for nearly a century past the British Government has refused to receive British subjects as heads of foreign missions.

§ 236. In 1878 Mr. M. Hopkins, who, in the absence of the Hawaiian envoy to Great Britain, desired to be recognised as *chargé d'affaires*, was informed that, being a British subject, he could not be received in that capacity, and was reminded of communications made to him to the same effect as far back as 1859. And in 1886 Mr. A. Hoffnung, who was accredited as Hawaiian *chargé d'affaires*, was only accepted as such on his becoming naturalised in Hawaii and so ceasing to be a British subject. His nephew, Mr. S. Hoffnung, divested himself of British nationality in like manner, and was thus enabled to act as *chargé d'affaires ad interim* in the absence of the head of mission.

§ 237. In Great Britain it has long been a settled principle that no British subject attached to a foreign embassy or legation, other than a servant, is entitled to the protection afforded to the diplomatic body by the statute 7 Anne, c. 12. On July 8, 1786, the following notice was published in the *London Gazette* :

"Whereas divers applications have of late been made by people of different descriptions to the foreign ministers resident in England to be appointed secretaries to some or other of the said foreign ministers in order to avail themselves of the protection due to persons in that situation against the ordinary course of legal proceedings in various cases. And whereas such indulgence is liable to many abuses, it is His Majesty's pleasure that henceforth no subject of His Majesty shall be permitted by the Secretary of State

<sup>1</sup> Hall, 355 n.

to have his name inserted at the Sheriff's office in the list of those who are to be deemed under the protection of any foreign minister, excepting only such persons as may be employed by the said foreign minister in the capacity of menial servants."

CARMARTHEN.

§ 238. The objection to receiving British subjects as members of a foreign mission has not, however, applied to the post of secretary to certain Oriental missions in England. The Chinese, Japanese and Siamese missions have from time to time employed British subjects in this capacity, and the custom may have extended to some other missions. But the condition is made that they shall not be regarded as entitled to diplomatic privilege, and their names are not inserted in the list of persons so entitled furnished to the Sheriffs of London and Middlesex.

§ 239. A state may declare beforehand the terms on which it will consent to receive its own national as a foreign diplomatic agent or a member of his staff. But if he be received without any such previous stipulation he becomes entitled to the *jus legationis*<sup>1</sup>:

When, as an exception, a foreign minister is a subject of the state to which he is accredited, and his principal consents to his continuing to be regarded as such, he remains subject to the law of the state in all matters not connected with his diplomatic mission; but though a subject of the court at which he resides, he must, so far as his character of public minister is concerned, enjoy the independence and all the other immunities and prerogatives accorded to the character with which he is clothed, during the whole period of his mission, unless the sovereign has consented to receive him only under the express condition that he shall continue to be regarded as his subject.<sup>2</sup>

§ 240. In 1890, in the case *Macartney v. Garbutt and others*, the plaintiff, Sir H. Macartney, a British subject, and English Secretary to the Chinese Legation at London, sought to recover £118, which he had paid under protest to avoid distraint upon the furniture in his house, for parochial rates levied by the Vestry of St. Marylebone. It was held by the court that his name having been submitted to the Foreign Office in the usual way, and his position as a member of the Chinese Legation having been recognised without reservation or condition of any sort, he was therefore clearly entitled to the privileges of the Corps Diplomatique, and it would follow that his personal effects were exempt from seizure. His rights in this respect appeared to be fully recognised by the local Act (35 Geo. III, c. 73) under which the rates were levied. An examination of the works of writers on international law confirmed the view that the

<sup>1</sup> Phillimore, ii. 179-81.

<sup>2</sup> de Martens-Geffken, i. 89.

only mode of escaping from the doctrine of exemption was to impose on an envoy, when received, that he shall be subject to the local jurisdiction. Judgment with costs was accordingly entered in Sir H. Macartney's favour.<sup>1</sup>

§ 241. Certain instances of the past are : In 1714 Sir Patrick Lawless was Spanish envoy in London, and General Wall from 1748 to 1762 ; both were Irishmen by birth. There is also the case of Benjamin Thompson, born in the United States, who entered the service of the Elector of Bavaria, by whom he was appointed as minister to Great Britain in 1798. He was refused by the British Government on the ground of his being a British subject, aggravated by the circumstance of his having formerly occupied the post of Under-Secretary of State in the American or Colonial Department in 1780. Several of the smaller German states were represented at Vienna by Austrians, and up to 1855 the chargé d'affaires of the Hanse Towns in London was a British subject. Wicquefort had been resident of the Duke of Lüneburg at The Hague, though he was a Dutch subject born at Amsterdam.

§ 242. "The laws of the United States forbid the employment of any other than a citizen of the United States in its diplomatic service. It is also a rule of the Department of State that no citizen of the United States shall be received by it as the diplomatic representative of a foreign government, but this rule is of a flexible character in its application. Anson Burlingame, who for some years had acted as the American minister in China, resigned to accept from the Chinese Government the post of special ambassador to the United States and certain European governments. He was received as such in Washington, and Secretary Fish negotiated with him and his colleagues an important treaty."<sup>2</sup>

"Mr. Camacho, a native of Venezuela but a naturalised citizen of the United States, was accepted as minister from Venezuela in 1880, on renewal of relations with that country which had been for some time suspended. On the other hand, General O'Beirne, a prominent citizen of New York, was accredited as diplomatic representative of the Transvaal Republic to the United States at the outbreak of hostilities with Great Britain ; and the Secretary of State, applying the rule, declined to receive him on the ground of his American citizenship, thus avoiding the question of the reception of a representative of a country which the British Government claimed was a suzerain state."<sup>3</sup>

"In late years a practice grew up of securing the insertion in the *Diplomatic List*, published monthly by the State Department,

<sup>1</sup> L.R. [1890] 24 Q.B.D. 368.

<sup>2</sup> *Foreign Relations of the United States*, 1868-9, i. 493, 601 ; Foster, *op. cit.*, 49.

<sup>3</sup> Should be : state under suzerainty.

of the names of resident attorneys of Washington as counsellors of certain legations of the less important countries. The main object of such insertion was to secure thereby invitations for the persons named and their wives to the receptions and teas at the White House. When the attention of Secretary Root was called to the practice he directed it to be discontinued, basing his action on the rule above cited, that an American citizen could not be clothed with a diplomatic character in a foreign legation in Washington.”<sup>1</sup>

§ 243. The Pan-American Convention of February 20, 1928, signed at Havana, lays down for the signatory states the following rule : Article 7.—“ States are free in the selection of their diplomatic officers, but they may not invest with such functions the nationals of a state in which the mission must function, without its consent.”

<sup>1</sup> Foster, *op. cit.*, 49, 50.

## CHAPTER XIV

### DIPLOMATIC AGENT PROCEEDING TO HIS POST

§ 244. IN ordinary circumstances a newly appointed diplomatic agent proceeding to his post will find there an established mission, fully provided with archives containing previous correspondence with his own Foreign Office, with the minister for foreign affairs of the state to which he is accredited and with miscellaneous persons ; also cyphers, collections of treaties and all other helps and appliances which he will require. He must carry with him his credentials to the head of the state, or if he is a chargé d'affaires a letter accrediting him in that capacity to the minister for foreign affairs at the capital where he is to reside. It will be prudent on his part to ascertain beforehand that the letter of recall of his predecessor has been presented in the proper quarter, or if that formality has not yet been complied with, to take the letter of recall with him. For in the contrary event it may happen that on arriving at his post and applying for an audience to present his credentials, he may receive for answer that his predecessor is not yet *functus officio*, and so his own recognition may be delayed until the necessary document can be procured from home.

§ 245. In addition to his credentials it is the custom of the Court of St. James to furnish a newly appointed ambassador or minister with a commission of appointment in such terms as the following :

(Seal)

(Signed) GEORGE R.I.

George, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India, etc., etc., etc.

To all and singular to whom these Presents shall come, Greeting.

Whereas it appears to Us expedient to nominate some person of approved Wisdom, Loyalty, Diligence and Circumspection to represent Us in the character of Our *Ambassador Extraordinary and Plenipotentiary* to.....

Now Know Ye that We, reposing especial trust and confidence in the discretion and faithfulness of Our Right Trusty and Well-beloved.....have nominated, constituted and appointed, as We do by these Presents nominate, constitute and appoint him, the said.....to be Our *Ambassador Extraordinary and Plenipotentiary* to.....aforesaid. Giving and granting to him in that character all power and authority to do and perform all proper acts, matters and things which may be desirable or necessary for the promotion of relations of friendship, good understanding and harmonious intercourse between Our.....and....., and for the protection and furtherance of the interests confided to his care ; by the diligent and discreet accomplishment of which acts, matters and things afore-mentioned he shall gain Our approval and show himself worthy of Our high confidence.

And We therefore request all those whom it may concern to receive and acknowledge Our said.....as such *Ambassador Extraordinary and Plenipotentiary* as aforesaid, and freely to communicate with him upon all matters which may appertain to the objects of the high mission whereto he is hereby appointed.

Given at Our Court of St. James, the.....day of....., in the year of Our Lord....., and in the.....year of Our Reign.

By His Majesty's Command,  
(Countersigned)

Or

(Seal)

(Signed) GEORGE R.I.

George, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India, etc., etc., etc.

To all and singular to whom these Presents shall come, Greeting.

Whereas it appears to Us expedient to nominate some person of approved Wisdom, Loyalty, Diligence and Circumspection to represent Us in the character of Our Envoy Extraordinary and Minister Plenipotentiary for Our Dominion of.....to.....

Now Know Ye, that We, reposing especial trust and confidence in the discretion and faithfulness of Our Trusty and Well-beloved.....have nominated, constituted and appointed, and We do by these Presents nominate, constitute, and appoint him the said.....to be Our Envoy Extraordinary and Minister Plenipotentiary for Our Dominion of.....to..... Giving and granting to him in that character all power and authority to do and perform all proper acts, matters and things which may be desirable or necessary for the promotion of relations of friendship, good understanding and harmonious intercourse between Our Dominion of

.....and....., and for the protection and furtherance of the interests confided to his care ; by the diligent and discreet accomplishment of which acts, matters and things, he shall gain Our approval and show himself worthy of Our high confidence.

And We therefore request all those whom it may concern to receive and acknowledge Our said Trusty and Well-beloved .....as such Envoy Extraordinary and Minister Plenipotentiary as aforesaid, and freely to communicate with him upon all matters which may appertain to the objects of the high mission to which he is hereby appointed.

Given at Our Court of St. James, the.....day of....., in the year of Our Lord....., and in the..... year of Our Reign.

By His Majesty's Command,  
(Countersigned)

§ 246. Formerly printed instructions for the guidance of their conduct were furnished to British ambassadors and ministers on taking up their appointments, but these were mainly of a formal nature, relating to matters which have become stereotyped by usage, and the custom no longer exists.

§ 247. The case of a negotiator at a congress or conference is naturally different. On such occasions special written instructions are indispensable. The delegate to such gatherings receives only full powers, not credentials. An ordinary permanent diplomatic agent is not provided with full powers, unless he is entrusted with the negotiation of a treaty instrument.

§ 248. Before starting for his post the agent should take care to let the probable date of his intended arrival be known, in order that when he reaches the frontier he may at once enter on the enjoyment of all the privileges and immunities attaching to his position, especially with regard to the passage of his personal effects through the Customs.

§ 249. A passport, in which his official status is fully detailed, should be taken, duly *visé* where necessary by the representative of the foreign state concerned, who should also be asked for the favour of a *laisser-passer* to admit of the free entry through the Customs of the agent's baggage and effects. If he has to pass through a third country before arriving at his destination, similar steps are advisable.

§ 250. Before proceeding to his post Callières recommends the perusal of the despatches exchanged between his predecessor and the Foreign Office, and after having perused them with

care and reflection, to discuss pending questions with the head of the office. He should gain as much information as possible from those who have preceded him at the post to which he has been appointed, and also make friends with the diplomatic representative of that state, who will be able to write home a favourable account of his character and disposition. He should also be careful in the choice of the servants he takes with him.

§ 251. In the past it was the custom for ambassadors to make a formal state entry into the capital of the sovereign to whom he was accredited, but this practice is no longer observed. A special ambassador is sometimes welcomed at the railway station on his arrival by the minister for foreign affairs or his representative. But, generally speaking, diplomatic agents travel to their posts with as little outward show as private persons.

With regard to his passage through a third country before arriving at his destination, see § 428.

§ 252. On reaching the capital he should at once formally notify his arrival to the minister for foreign affairs, and ask when it will be convenient to the latter to receive him. At some capitals he may also be expected to notify the Master of the Ceremonies or the Introducer of Ambassadors. This may be done by letter. He also requests the minister for foreign affairs to take the orders of the head of the state respecting an audience for the purpose of presenting his credentials, of which he must furnish a copy beforehand.

§ 253. Until he has presented his credentials, with the due ceremonies which are the outward and visible signs of his official character, the agent makes no official calls. But as most European Powers at the present day appoint members of their regular diplomatic service to represent them at foreign capitals, he is likely to find among his future colleagues acquaintances or friends with whom he has been previously associated in the course of his career, and he can freely make *private* visits to them. It is also advisable to call privately on the *doyen* of the diplomatic body, who will be able to afford him useful information as to the ceremonies accompanying the presentation of his credentials, the audiences of members of the reigning family in a monarchical country, for which he may perhaps have to ask, the official calls he must make, and other matters of local etiquette. On these points, however, it must be understood that court and departmental officials, like the Master of the Ceremonies, the Marshal of the Diplomatic

Corps in Great Britain, or Introducer of Ambassadors, are the authoritative exponents of the local etiquette.

§ 254. On being informed by the minister for foreign affairs of the day and hour at which his audience is to take place, if it is the customary local usage for the agent to address a formal speech to the sovereign or president, he sends to the minister for foreign affairs a copy of what he proposes to say, but he has no right to expect a copy of the reply which will be made to him. Such a speech should be of a general character. It might, for instance, begin by expressing the agent's satisfaction at having been appointed to represent his country; convey assurances of friendship on the part of his own sovereign or president, and his own wishes for the prosperity and welfare of the sovereign or president he is addressing; state that he will do all in his power to strengthen the friendly relations existing between the two countries; and bespeak the friendly co-operation of the sovereign's or president's ministers in his endeavour to fulfil the purpose of his mission. He will mention also his credentials (when doing so he takes the latter from his senior secretary, and presents it to the sovereign or president, who hands it, usually unread, to the minister for foreign affairs). If the agent has formerly had diplomatic service in the country, *e.g.* as secretary, a graceful allusion to an agreeable sojourn will be in place.

§ 255. His speech must on no account contain any reference to matters of controversy between the two states, nor to any current business, but, if an alliance of a definite character exists, mention of it may be fitly introduced.

We remember an occasion in which a diplomatic agent, on the occasion of presenting his credentials, committed the mistake of urging certain pecuniary claims of his countrymen against the government of the country to which he was accredited, and thereby gave serious offence at the very outset of his mission.

The object of communicating a copy of the speech beforehand is to give the head of the state, to whom it is to be addressed, an opportunity of requesting modifications, and it has happened on more than one occasion that this has been done.<sup>1</sup>

§ 256. Besides committing his speech to memory as far as he is able, the agent would do well to have a copy in his pocket.

The Comte de Ségur, in 1785, on proceeding to the Palace for his audience of Catherine the Great, and while waiting in the ante-

<sup>1</sup> García de la Vega, 635.

room, engaged in a conversation with his Austrian colleague, which proved of such an absorbing character that the speech which he had prepared faded from his memory. When he entered the presence of the Empress, he found that he could not recollect a single word of it, but, with great presence of mind, he improvised an entirely new speech, to her great surprise, as she had received a copy of the original discourse, and had framed a corresponding answer.

Subsequently when he came to be on intimate terms with the Empress, she asked him one day why he had suddenly taken it into his head to change his speech at his first audience. He replied that he had lost his nerve in the presence of so much glory and majesty, and so expressed the sentiments of his sovereign in the first phrases that suggested themselves. The Empress answered that he had done right. Everyone had his failings, and one of hers was easily to conceive prejudices. "I remember that one of your predecessors was so perturbed on the occasion of his presentation to me that he could only say, 'Le Roi mon maître, Le Roi mon maître.' The third time he repeated these words I interrupted him by saying that I had long been aware of his master's friendship for me. Everybody assured me that he was an intelligent man, but his bashfulness always made me prejudiced against him, for which I reproach myself, but, as you see, somewhat late in the day."<sup>1</sup>

§ 257. It is not usual for the diplomatic agent to speak again in reply to the answer made to him by the sovereign or president.

The language of the speech may be that of his own nationality, or French. In Oriental countries the former is most usual, the speech being translated into the language of the country by an official interpreter; the head of the state replies in his own tongue, and the reply is, if necessary, then translated.

§ 258. The following is an instance of a discourse on such occasions :

SIRE,

J'ai l'honneur de présenter à Votre Majesté les lettres qui m'accréditent auprès de son auguste personne en qualité de . . .

Permettez-moi, Sire, d'être en même temps auprès de Votre Majesté l'interprète des sentiments d'estime et de sympathie que mon souverain professe à un si haut degré pour la personne de Votre Majesté, et les vœux qu'il fait pour la félicité de votre famille et pour la prospérité de vos peuples.

A l'expression de ces sentiments, daignez, Sire, me permettre d'ajouter l'hommage de mon profond respect. Pendant le cours de la mission que je vais commencer, je ferai tout ce qui dépendra de moi pour mériter la confiance de Votre Majesté ; je me trouverai

<sup>1</sup> *Mémoires et Souvenirs de M. le Comte de Ségur* (3rd ed.), ii. 215.

heureux si j'y réussis et si mes constants efforts contribuent à resserrer encore les liens d'amitié et d'intérêt qui unissent déjà si étroitement les deux peuples.<sup>1</sup>

§ 259. Speech of a Spanish ambassador to the President of the French Republic :

MONSIEUR LE PRÉSIDENT,

J'ai l'honneur de remettre à Votre Excellence les lettres par lesquelles S. M. le roi Don . . . m'accrédite en qualité d'Ambassadeur Extraordinaire et Plénipotentiaire auprès du Président de la République Française.

C'est avec empressement que je saisis cette occasion solennelle pour exprimer, au nom de mon auguste Souverain, les vœux très sincères qu'il forme pour la prospérité de la France et pour le bonheur de l'homme d'État élevé par ses concitoyens à la première magistrature du pays.

Quant à moi, porté vers la France par toutes mes sympathies, j'accepte avec joie l'honorable mission de maintenir, de développer et de rendre encore plus intimes les bons rapports déjà existants entre deux nations sœurs par la race et l'origine, par le voisinage et la communauté des intérêts.

J'apporterai tout mon zèle dans l'accomplissement d'un devoir si conforme à mes sentiments, et j'espère pouvoir compter, pour y réussir, sur la haute bienveillance de M. le Président de la République comme sur le puissant et amical concours de son gouvernement.

§ 260. Reply of the President of the French Republic :

MONSIEUR L'AMBASSADEUR,

Je remercie S. M. le roi d'Espagne des vœux que vous m'apportez en son nom pour la France et pour le Président de la République. J'ai eu récemment l'honneur de dire à votre illustre prédécesseur, et je saisis avec empressement cette nouvelle occasion de répéter, combien je désire ardemment le bonheur de la noble nation espagnole et de son auguste Souverain.

Pour vous, monsieur l'Ambassadeur, qui connaissez la France, et qui en parlez si affectueusement, soyez persuadé qu'elle vous accueillera avec une vive sympathie et que vous trouverez auprès de son gouvernement, dans l'accomplissement de votre mission, tout le concours et toute la cordialité que vous pouvez souhaiter.<sup>2</sup>

§ 261. At most capitals there is a marked distinction between the reception of ambassadors, on the one hand, and of envoys extraordinary and ministers plenipotentiary and diplomatic agents of lesser rank on the other.

An ambassador is taken to the palace by a court or state official with one or more carriages for himself and his suite,

<sup>1</sup> García de la Vega, 636.

<sup>2</sup> de Castro y Casaleiz, ii. 291-2.

while envoys and other ministers use their own carriages. Usually the ambassador enters the presence unaccompanied by the members of his mission, and after the conclusion of the ceremony of delivery of credentials he asks permission to present them. At most capitals he is introduced to the presence of the head of the state by the Master of the Ceremonies or by a court or state official of equivalent importance. He does not always make a set speech ; this is a point regulated by local custom. The ceremonial in returning to his residence is the same as on going to the audience. In most countries, after having presented his credentials, the ambassador makes the first official call on the other ambassadors, but he receives the first call from envoys and ministers resident. He may also hold one or two official receptions, to which are invited the other members of the diplomatic body, official persons and other distinguished members of society, of whom a list is furnished to him by the proper court or state official. If he is married, the ambassadress will at the same time receive the wives of the before-mentioned persons.

§ 262. In general, an ambassador, on retiring from his post, goes to the palace in his own carriage, without the members of his mission, and presents his letters of recall at a private audience. If he is unable to present them himself, they are delivered by his successor together with his own credentials.

§ 263. An envoy extraordinary and minister plenipotentiary, or a minister resident, usually goes to his audience without the members of his legation and in his own carriage, and makes no set speech when delivering his credentials. At some capitals, however, he takes his *personnel* with him, and presents them at the end of his audience. Altogether it is a much simpler affair than the audience accorded to an ambassador.

§ 264. At Washington an envoy goes in his own carriage to the Department of State, whence he is accompanied without display to the White House by the Secretary of State, and into the Blue Room, where he remains while the Secretary of State goes to notify the President of his arrival. The President enters with his secretary, the envoy is presented and at once proceeds to read his address, which is replied to by the President. The letter of credence is received by the President and handed to the Secretary of State, and after a brief informal conversation the reception ends. Since the establishment of embassies at Washington, the practice is to send a member of the President's military staff in one of his carriages to bring the ambassador to the White House.

§ 265. Besides the audience for the presentation of credentials to a sovereign or president there may be other audiences or presentations. To attempt to give details, as they are laid down in the *Gula Práctica* and in other sources of information, would unduly increase the bulk of this chapter, and they can be best learnt at each capital by the newly arrived diplomatic agent from the proper official. No attempt is therefore made to supply them here.

§ 266. In countries where there are no ambassadors, it seems to be the rule that envoys and ministers resident are fetched in state carriages to the audience for the presentation of credentials. At some of these it is the custom to make a speech on delivering credentials, at others not. The minister for foreign affairs is usually present on such occasions, but not at the audience for taking leave.

§ 267. *Ceremonial of the Court of St. James.*

*Ambassadors* on arrival in Great Britain notify the fact to the Secretary of State for Foreign Affairs in the usual manner, and ask for an audience of the Sovereign for the purpose of presenting their credentials, at the same time furnishing the usual copy of the latter. They write also to the Secretary of State, asking when he can receive them.

When the date of the audience is appointed, the ambassador is taken to the palace by the Marshal of the Diplomatic Corps in a town coach. The *personnel* of the embassy follow in other town coaches, with attendants in royal scarlet, and two footmen standing on the footboard at the back of each carriage. Ambassadors never make set speeches.

The ambassador is received at the grand entrance by the Equerry-in-Waiting, and in the Grand Hall by the Master of the Household, and is conducted by them to the Bow Room, where he meets the Secretary of State for Foreign Affairs (or in his absence the Permanent Under-Secretary of State for Foreign Affairs), the Lord-in-Waiting and the Groom-in-Waiting. The personnel of the embassy are also shown into the Bow Room.

The Secretary of State having taken His Majesty's commands, the ambassador is conducted to the Presence by the Lord-in-Waiting and the Marshal of the Diplomatic Corps, and is announced to His Majesty by the Marshal of the Diplomatic Corps.

The Lord-in-Waiting and the Marshal of the Diplomatic Corps withdraw.

At the conclusion of the audience the personnel of the

embassy are introduced into the Presence by the Marshal of the Diplomatic Corps, and severally presented to His Majesty by the ambassador.

The reception over, the ambassador is conducted to the grand entrance by the Master of the Household and to the coach by the Equerry-in-Waiting. He is then accompanied to the embassy by the Marshal of the Diplomatic Corps, the personnel following as before.

Levée dress is worn.

Arrangements for any subsequent reception by members of the Royal Family are made through the Marshal of the Diplomatic Corps.

Ambassadors do not hold receptions after the presentation of their credentials, as may be the custom in some other countries. With respect to ordinary visits, heads of missions generally have recourse to their *doyen* for help and assistance.

An ambassador desirous of obtaining an audience of the Sovereign (other than that for presenting his credentials) would apply to the Marshal of the Diplomatic Corps.

§ 268. An *Envoy Extraordinary and Minister Plenipotentiary*, or a *Minister Resident*, drives to the palace in his own carriage, and attends the audience alone.

He is met at the grand entrance by the Marshal of the Diplomatic Corps and the Equerry-in-Waiting, and conducted to the Grand Hall, where he meets the Master of the Household and is taken by him to the Bow Room.

Here he meets the Permanent Under-Secretary of State for Foreign Affairs, the Lord-in-Waiting and the Groom-in-Waiting.

The Under-Secretary of State having taken His Majesty's commands, the minister is conducted to the Presence by the Lord-in-Waiting and the Marshal of the Diplomatic Corps, and is announced by the Marshal of the Diplomatic Corps.

The Lord-in-Waiting and the Marshal of the Diplomatic Corps withdraw.

At the conclusion of the audience the minister is conducted to the Grand Hall by the Master of the Household, and to his carriage by the Marshal of the Diplomatic Corps and the Equerry-in-Waiting.

Levée dress is worn.

The procedure is the same as in the case of an ambassador, so far as asking for an audience and calling on the Minister for Foreign Affairs are concerned.

§ 269. Reception of a *Special Ambassador or Special Envoy*.

The ceremonial is the same as in the case of a permanent ambassador.

§ 270. A titular *Chargé d'affaires* is presented to the Sovereign at a Levée or a Court by the Secretary of State for Foreign Affairs.

§ 271. A *Chargé d'affaires ad interim* will have been presented in his proper rank—Counsellor, First Secretary, or whatever he may be—on his arrival, at the earliest Levée, but there is no second presentation as *Chargé d'affaires*; he simply assumes the duties of his chief, and attends Levées, Courts, etc., in his absence. When a foreign representative goes on leave, he writes to the Foreign Office to announce his departure and whom he has left in charge.

§ 272. Presentation of the Corps Diplomatique on the occasion of the *Visit of a Foreign Sovereign*: The Chefs de Mission are presented to the Sovereign by the ambassador or minister, assisted by the Marshal of the Diplomatic Corps.

§ 273. In former days the reception of an ambassador was attended by an elaborate ceremonial. An account of the public entry into London of the Venetian ambassador in 1715 is as follows :

Leaving his house at nine in the morning of August 27, he drove with his suite *incogniti* in hired carriages to the Tower, whence they were conveyed to Greenwich in boats furnished by the Master of the Ceremonies. Greenwich was the point from which these public entries commenced. There they waited, at a house previously hired for the ambassador, for the arrival of the Master of the Ceremonies and the Earl of Bristol, who had been deputed by the King to accompany the *cortège* to London. After refreshments had been served, the party embarked in royal barges, and were rowed to the Tower, where they disembarked. Here two of the royal carriages and one of the Prince of Wales were standing ready, and three belonging to the ambassador. The moment the procession started a salute was fired by the Tower artillery. It was headed by the carriage of Lord Bristol, next came twenty of the ambassador's footmen, a squire on horseback and six pages on foot, then the two royal coaches and the coach of the Prince of Wales, the ambassador's three carriages, the first of which was drawn by eight horses, followed by the coaches and six belonging to a small number of peers. In this style the ambassador was conveyed to his residence in St. James' by seven o'clock in the evening. The public audience of the ambassador took place on September 2, with great pomp and

ceremony, and he was afterwards presented to the Prince and Princess of Wales. The King's reply to the ambassador's speech was read in French by the Master of the Ceremonies.<sup>1</sup>

§ 274. *Ceremonial on the presentation of Letters of Credence by foreign representatives accredited to the Government of the Union of Soviet Socialist Republics.* (Circular of 1923.)

On the day appointed for the audience the *Chef du Protocole* attends at the house of the foreign representative (ambassador, *représentant plénipotentiaire*, or minister), in order to accompany him to the Kremlin. The official personnel of the mission (embassy, *représentation plénipotentiaire*, or legation), accompanied by an official attached to the *Service du Protocole*, follow in other carriages.

At the gate of the Kremlin the foreign representative is received by the Director of the political department of the foreign administration. The sentinel Red Guards at the gate of the Kremlin render him military honours when passing.

The foreign representative and the official personnel of his mission are introduced into the hall, where the President, the Secretary and members of the Central Executive Committee of the Union, the Commissar for Foreign Affairs and members of the College of the People's Commissariat for Foreign Affairs are already assembled. The arrival of the foreign representative is announced by the *Chef du Protocole*.

The foreign representative delivers his speech and hands his letters of credence to the President, who passes them to the People's Commissar for Foreign Affairs. If the speech is in a foreign language an interpreter reads a Russian translation of it. In this event the speech made in Russian by the President is equally followed by a translation.

After the speech of the President the representative presents the personnel of the mission.

The President then accords a private audience to the foreign representative. This takes place in the presence of the People's Commissar for Foreign Affairs in an adjoining room.

The audience over, the foreign representative returns to his residence with the same ceremonial.

§ 275. *Ceremonial of the Vatican for Ambassadors, Ministers and Chargés d'affaires.*

The ambassador is received under the porch in the Cortile

<sup>1</sup> Nozze Busnelli-Ballarín, Bologna, Giacomini.

di S. Damaso by a Privy Chamberlain Supernumerary of Sword and Cape, who escorts him during his visit, taking post at first on the ambassador's left. Four pontifical chairmen also await the arrival of the ambassador and walk in front of him up the papal stairs. The ambassador with the staff of the embassy wear diplomatic uniform with decorations.

In the Sala Clementina the ambassador and his staff are met by the Monsignor Secretary of the Sacred Congregation of Ceremonial who, placing himself on his left, escorts him to the Sala degli Arazzi, and the Privy Chamberlain of Sword and Cape takes post on the left of the senior member of the embassy staff.

In the throne room six Noble Guards, under the orders of the Cadet, are posted beside the papal throne.

The Holy Father, informed by Monsignor Master of the Household of the arrival of the new ambassador, wearing his rochet and mozzetta, seats himself on the throne, accompanied by his personal staff, who dispose themselves on both sides of the throne in the following order :

On the right of His Holiness : His Excellency the Monsignor Maggiordomo ; the Monsignor Privy Almoner ; the Senior Monsignor Privy Chamberlain Partecipante ; the Quarter-Master General of the Sacred Apostolic Palaces ; the Postmaster-General ; the Exon of the Week, Noble Guard ; the Monsignor Privy Chamberlain Supernumerary ; the Privy Chamberlain Supernumerary of Sword and Cape.

On the left of His Holiness : the Monsignor Master of the Household ; the Monsignor Sacrist ; the Junior Monsignor Privy Chamberlain Partecipante ; the Master of the Horse ; the Commandant of the Swiss Guards ; the Monsignor Chamberlain of Honour, in purple dress ; the Chamberlain of Honour of Sword and Cape Supernumerary.

The prelates on service for the ceremony, *i.e.* the Maggiordomo, the Master of the Household, the Almoner, the Sacrist, the Secretary of Ceremonial, wear prelatical dress with rochet and mantelletta. The Monsignori Privy Chamberlains Partecipanti, the Privy Chamberlain Supernumerary, and the Chamberlains of Honour wear purple soutane and mantellone.

The Civil Privy Chamberlains Partecipanti, *i.e.* the Quarter-Master General, the Master of the Horse, and the Postmaster-General, are in full-dress uniform.

The Privy Chamberlain and the Chamberlain of Honour of Sword and Cape Supernumeraries are in full uniform.

The detachments of the pontifical armed forces wear the uniform prescribed by their own regulations.

As soon as the Holy Father is seated on the throne the Monsignor Privy Chamberlain Partecipante, who has taken post on the left of the throne, on receiving the order from the Master of the Household and having made the usual genuflections, proceeds to the Sala degli Arazzi to instruct the Monsignor Secretary to introduce the ambassador. He then returns to his place repeating the genuflections.

The Monsignor Secretary of Ceremonial introduces the ambassador into the presence of His Holiness, announcing him in audible tone.

The ambassador, with the Secretary of Ceremonial on his left and followed by his staff, together with the Privy Chamberlain Supernumerary, approaches the papal throne. The ambassador and his staff make the three genuflections, the first on entering the room, the second in the middle, and the third on the steps of the throne.

Non-Catholic ambassadors, instead of making three genuflections, may make three low bows.

The Secretary of the Ceremonial remains on the left of the ambassador, with the staff of the embassy immediately behind. The ambassador, standing, then reads his speech and hands his Letter of Credence to the Pope, who passes it to the Monsignor Master of the Household. The speech over, the Holy Father briefly replies and then, leaving the throne, invites the ambassador into the library for a private conversation. At that moment the Monsignor Privy Chamberlain Partecipante opens the door of the library, into which His Holiness proceeds with the ambassador. The Master of the Household accompanies His Holiness into the library to offer a chair to the ambassador. The other dignitaries present at the ceremony resume their places in the respective rooms. The staff of the embassy, during the private conversation between His Holiness and the ambassador, wait in the Noble Ante-Chamber. The Secretary of Ceremonial presents them to the Master of the Household, who, on a signal given by the Holy Father, introduces them into the Presence and they are presented by the ambassador.

On leaving the library the ambassador is presented by the Secretary of Ceremonial to the Master of the Household.

The ambassador, with the Master of the Household on his left and followed by the staff of the embassy and the Secretary of Ceremonial, passes through the room of the Tronetto into the Secret Ante-Chamber, where the Master of the Household

presents to the ambassador His Excellency the Monsignor Maggiordomo and the staff of the Secret Ante-Chamber in order of precedence. To them is also presented the staff of the embassy.

The presentations over, the Master of the Household accompanies the ambassador to the doorway of the Secret Ante-Chamber, where he takes leave of His Excellency and of his staff.

The ambassador, with the Secretary of Ceremonial on his left, and followed by his staff and by the Privy Chamberlain Supernumerary of Sword and Cape, and preceded by four ushers, leaves the pontifical apartments to pay a visit to His Eminence the Cardinal Secretary of State, receiving on his way the due military honours from the various detachments on duty of the Noble Guard, the Swiss Guard, the Palatine Guard and the Gendarmerie, drawn up in their respective rooms.

The ambassador, escorted by four Swiss Guards with halberds and preceded by four chairmen, descends the papal stairs to the apartment of the Cardinal Secretary of State on the first floor. In the first ante-chamber of the Cardinal's apartment two gendarmes are posted in full uniform.

The Secretary of Ceremonial accompanies the ambassador across the apartment and His Eminence the Cardinal Secretary of State, who has been informed by his own Master of the Household, meets him at the doorway of the reception room, where the Secretary of the Ceremonial makes the presentation. The conversation then takes place.

On this occasion His Eminence wears his ordinary cardinalitial robes of the colour of the day and is accompanied by his Noble Court, *i.e.* his Auditor, Master of the Household, Gentleman-in-Waiting and Chaplain Train-bearer.

During the visit the picket of the Swiss Guard waits at the entrance to the apartment, the chairmen in the first ante-chamber, the ushers in the corner room, the Privy Chamberlain Supernumerary of Sword and Cape in the Hall of the Congregations, the staff of the embassy in the Throne Room with the Secretary of Ceremonial.

The conversation over, the ambassador presents his staff to the Cardinal Secretary of State.

A non-Catholic ambassador then descends the papal stairs to the porch in the Cortile di S. Damaso, where he takes leave of the Secretary of Ceremonial and of the Privy Chamberlain Supernumerary of Sword and Cape and, entering his motor-car, returns to the embassy.

A Catholic ambassador, accompanied by the same escort, crosses the Sala dei Paramenti, the Sala Ducale, and the Sala Regia, and descends the Scala Regia to the Basilica of St. Peter's to venerate the Tomb of St. Peter.

Under the orders of Monsignor the Econome of the Fabric of St. Peter's, four vergers join the cortège at the Scala del Portico ; two others are on duty at the entry to the Chapel of the Blessed Sacrament and two at the outside doorway of the Scala Braschi.

The Canon Secretary of the Vatican Chapter, having been warned by the Master of the Household of the day and hour of the visit, the ambassador is received at the main door of the Basilica by four Canons and the Minor Sacristan.

The Master of Ceremonies of the Basilica is also on duty and the Canons wear choir dress with purple soutane.

The senior Canon is presented to the ambassador by the Secretary of the Ceremonial, and he in turn presents his three colleagues.

The senior Canon then takes from the Minor Sacristan the sprinkler with Holy Water, presents it to the ambassador, who places his finger on it and crosses himself.

The ambassador, accompanied by the two senior Canons, proceeds up the nave towards the Chapel of the Blessed Sacrament and there kneels in prayer, on the prie-dieu placed within the chapel. The remaining two Canons place themselves by the side of the embassy staff. Those who preceded the ambassador place themselves on each side of the prie-dieu and the rest of the party remain in their places and kneel.

The ambassador, accompanied as before, then proceeds to pray before the altar of the Blessed Virgin and the altar of the Confession at the Tomb of St. Peter.

The ambassador with his staff leaves the Basilica by the Sacristy passage, descends the Scala Braschi, and enters his motor-car, taking leave of the Canons, the Secretary of Ceremonial, and the Privy Chamberlain Supernumerary of Sword and Cape.

The Cardinal Secretary of State, wearing a ferraiclone of the colour of the day, and accompanied by the Master of the Household, returns on the same day the ambassador's visit.

Their Excellencies the Maggiordomo of His Holiness and the other prelates " di fiocchetto " all call on the ambassador. The dignitaries of the Noble Ante-Chamber, who were on duty during the ceremony, all write their names in the ambassador's visitors' book.

After the presentation of credentials the ambassador

writes to the Dean of the Sacred College, informing him of the fact and requesting an audience.

The Cardinal Dean in response fixes a day and hour for the visit, which takes place in official form in the Throne Room of the Cardinal Dean.

On this occasion His Eminence wears cardinalitial dress, with ferraiclone of the colour of the day, and is surrounded by his noble court, *i.e.* his Auditor, the Master of the Household, the Gentleman-in-Waiting, and Chaplain Train-bearer.

The ambassador and his staff wear diplomatic uniform with decorations.

The Cardinal and the ambassador seat themselves in two chairs by the throne.

The conversation over, the Cardinal Dean presents his court to the ambassador, who in return presents his staff to His Eminence.

The Cardinal Dean, accompanied by his Master of the Household, returns on the same day the visit of the ambassador.

On the following days the ambassador personally proceeds to call upon all the cardinals present in Curia and likewise on the Dean of the Diplomatic Corps and on his other colleagues.

The reception of ministers plenipotentiary, ministers resident and *chargés d'affaires* is on the same lines, but with differences as to the number of escorting officials, category of uniform, place of meeting. A non-Catholic *Chef de Mission* is not expected to genuflect to the Pope or to visit St. Peter's.

## CHAPTER XV

### CLASSIFICATION OF DIPLOMATIC AGENTS

§ 276. DIPLOMATIC agents are divided into the following classes :

1. Ambassadors. Legates, who are papal ambassadors extraordinary, charged with special missions, primarily representing the Pope as Head of the Church, always cardinals, and sent only to states acknowledging the spiritual supremacy of the Pope. Nuncios, who are ordinary ambassadors resident, and are never cardinals.
2. Envoys and ministers plenipotentiary.
3. Ministers resident, accredited to the sovereign.
4. Chargés d'affaires, accredited to the minister for foreign affairs.<sup>1</sup>

§ 277. This classification is based on the following regulations adopted at the Congress of Vienna in 1815 and added to at the Congress of Aix-la-Chapelle in 1818.

#### *Règlement sur le rang entre les agents diplomatiques*<sup>2</sup>

Pour prévenir les embarras qui se sont souvent présentés et qui pourraient naître encore des prétentions de préséance entre les divers agents diplomatiques, les plénipotentiaires des puissances signataires du traité de Paris sont convenus des articles qui suivent ; et ils croient devoir inviter les représentants des autres têtes couronnées à adopter le même règlement.

Art. 1.—Les employés diplomatiques sont partagés en trois classes :

Celle des ambassadeurs, légats ou nonces ;

Celle des envoyés, ministres ou autres, accrédités auprès des souverains ;

Celle des chargés d'affaires, accrédités auprès des ministres chargés du portefeuille des affaires étrangères.

Art. 2.—Les ambassadeurs, légats ou nonces, ont seul le caractère représentatif.

<sup>1</sup> Hall, 356.

<sup>2</sup> de Martens-Geffken, i. 53.

Art. 3.—Les employés diplomatiques en mission extraordinaire n'ont, à ce titre, aucune supériorité de rang.

Art. 4.—Les employés diplomatiques prendront rang entre eux, dans chaque classe, d'après la date de la notification officielle de leur arrivée.

Le présent règlement n'apportera aucune innovation relativement aux représentants du pape.

Art. 5.—Il sera déterminé dans chaque État, une mode uniforme pour la réception des employés diplomatiques de chaque classe.

Art. 6.—Les liens de parenté ou d'alliance de famille entre les cours ne donnent aucun rang à leurs employés diplomatiques.

Il en est de même des alliances politiques.

Art. 7.—Dans les actes ou traités entre plusieurs puissances qui admettent l'alternat, le sort décidera, entre les ministres, de l'ordre qui devra être suivi dans les signatures.<sup>1</sup>

Le présent règlement sera inséré au protocole des plénipotentiaires des huit puissances signataires du traité de Paris, dans leur séance du 19 mars, 1815.

(Signed in alphabetical order of the states represented, viz. : Autriche, Espagne, France, Grande-Bretagne, Portugal, Prusse, Russie, Suède.)

§ 278. Addition made at the Congress of Aix-la-Chapelle by the plenipotentiaries of the five Great Powers, at their meeting of November 21, 1818 :

“Pour éviter les discussions désagréables qui pourraient avoir lieu à l'avenir sur un point d'étiquette diplomatique que l'annexe du recès de Vienne par laquelle les questions de rang ont été réglées ne paraît pas avoir prévu, il est arrêté entre les cinq cours que les ministres-résidents accrédités auprès d'elles formeront, par rapport à leur rang, une classe intermédiaire entre les ministres du second ordre et les chargés d'affaires.”

(*Vide* Protocole de la Conférence du 21 novembre 1818.) It was signed by Metternich, Wellington, Nesselrode, Richelieu, Hardenberg, Capo D'Istria, Castlereagh, Bernstorff, *i.e.* or in no regular order.)<sup>2</sup>

§ 279. It appears from the foregoing that on neither of these two occasions did the plenipotentiaries act in conformity with what they had laid down in Article 7 of the Vienna regulations, but signed in the alphabetical order, according to the French language, of the names of the states they represented, or else pêle-mêle. The former is the modern usage in similar cases.

<sup>1</sup> See footnote to § 38. Though the article speaks only of “several” Powers, the principle of the *alternat* is equally followed in bilateral treaties.

<sup>2</sup> de Martens-Geffken, i. 54 ; Calvo, *Le Droit international*, etc., iii. 183 n.

§ 280. The classification established by the Congress of Vienna in 1815, as amended by the Protocol of Aix-la-Chapelle in 1818, constitutes to-day an integral part of diplomatic custom admitted throughout the world.<sup>1</sup> The United States, *e.g.*, adopted it for reasons of convenience and uniformity<sup>2</sup>; the law of March 1, 1893, declared :

“ Whenever the President shall be advised that any foreign government is represented, or is about to be represented, in the United States by an ambassador, envoy extraordinary, minister plenipotentiary, minister resident, special envoy or chargé d'affaires, he is authorised in his discretion to direct that the representative of the United States to such government shall bear the same designation.”<sup>3</sup>

§ 281. The determination of rank among diplomatic agents effected by the regulations adopted in 1815 and 1818 put an end to the disputes formerly existing regarding matters of precedence.<sup>4</sup>

§ 282. Venice originated the institution of permanent diplomatic missions. In the sixteenth century the Republic had ambassadors ordinary at Vienna, Paris, Madrid and Rome, while the Emperor and the Kings of France and Spain had ambassadors, and the Holy See a nuncio, at Venice. Residents were accredited to the courts of Naples, Turin, Milan and London, as well as to the Swiss cantons. At Constantinople there was a *bailo* (*bajulus*).<sup>5</sup> It was partly the cost of embassies, partly the trouble arising from disputes about precedence and ceremonial, that led to the appointment of agents or *residents*, who were not entitled to the same ceremonial honours as ambassadors.<sup>6</sup> In the sixteenth century the less honourable title of agent began to fall into disuse, and the process continued during the seventeenth century.<sup>7</sup> Chargé d'affaires was another title for these diplomatists of inferior rank. Residents are found at various periods till the close of the eighteenth century. In 1675 the Dutch negotiator of the preliminary treaty with Sweden respecting contraband of war, etc., is described as “ Minister Celsorum & Præpotentium Dominorum Ordinum Generalium Fœderati Belgii ad Aulam

<sup>1</sup> Deák, *Classification, etc. des agents diplomatiques*, Rev. de Dr. Int. (1928), 183.

<sup>2</sup> *Instructions to Diplomatic Officers of the United States* (1897), §§ 18-19.

<sup>3</sup> 27 *Statutes at Large*, 497, c. 182.

<sup>4</sup> Deák, *op. cit.*, 185.

<sup>5</sup> Nys, *Les Origines du Droit international*, 312. There was a Venetian *bailo* there already in 1249, but not till after the conquest by the Turks did he come to have a diplomatic character (Holtzendorff, iii. 613).

<sup>6</sup> Schmelzing, ii. 115; de Martens-Geffken, i. 59.

<sup>7</sup> Krauske, 160.

altissime memoratæ Regiæ Sacræ Majestatis Sueciæ Residens," and also as "Dominus Residens," both in the preamble. Frederick William of Brandenburg (Der Grosse Kurfürst), from motives of economy, appointed no ambassadors. In 1651 he had residents at The Hague, Vienna, Paris, Stockholm, Cologne and Brussels.<sup>1</sup> Bonet was the King of Prussia's resident in London in 1710. In 1745, France had a resident at Geneva. The Holy Roman Emperor in 1727 had residents at London, Lisbon and Constantinople. Vattel, in 1758, speaks of ambassadors, envoys, residents and ministers.<sup>2</sup>

§ 283. The designation *envoyé*, which is a translation of *ablegatus*, seems up to the middle of the seventeenth century not to have been more highly esteemed than that of resident.<sup>3</sup> At that period the general position was as follows : Diplomatic agents were still divided into two classes, the first consisting of ambassadors or *legati*, the second comprising agents, residents, *envoyés* and *ablegati* ; of these agent is the earliest, *envoyé* the latest in origin. Just as the title of resident had superseded that of agent, so the *envoyé* with the additional qualification of *extraordinaire* pushed the resident ever further into the background.

§ 284. In the second half of the seventeenth century arose the practice of designating resident ambassadors as "extraordinary." Originally this term had been applied only to those who were sent on special missions. The disputes about precedence between ordinary and extraordinary ambassadors furnished the motive to both monarchs and their agents for this otherwise unreasonable custom. In imitation of the ambassador extraordinary, the addition was conferred upon envoys, who thereupon began to claim precedence over residents. Such questions of precedence were naturally regulated by the etiquette of the court to which the diplomatic agent happened to be appointed, and in Louis XIV's time the French Court refused to make any difference. Still the envoys extraordinary went on asserting their pretensions, until in the beginning of the eighteenth century the balance began to incline in their favour at Paris and Vienna, the two courts which were most regarded as having a voice in such matters, while lesser courts continued to recognise only the old division into two classes. The title of resident was also degraded by the smaller German courts giving, or even selling, it to private persons who had no diplomatic functions at all<sup>4</sup> (much in the same way as in more recent times they had conferred

<sup>1</sup> Krauske, 129.

<sup>2</sup> Krauske, 163.

<sup>3</sup> Nys, *Droit International*, ii. 345.

<sup>4</sup> *Ibid.*, 165, 174.

decorations with a lavish hand). In the eighteenth century, between the envoy extraordinary and the resident there are found ministers, ministers resident and ministers plenipotentiary.<sup>1</sup> *Plenipotentiarii nomine tales magis in usu sunt, quam vere tales*, says a writer of 1740 quoted by Krauske. At the negotiations which preceded the peace of Nijmegen (1678), the conjunction of the two titles of envoy extraordinary and minister plenipotentiary in one person made its appearance. According to the regulations at the French Court the envoy extraordinary presented his letters of credence to the King, while the mere minister plenipotentiary, like the resident and others of the third class, such as the chargé d'affaires, delivered theirs to the minister for foreign affairs.

### *Ambassadors*

§ 285. The ordinary practice now is to give to a diplomatic agent of the first class the title of ambassador extraordinary and plenipotentiary.

Until the close of last century France appears to have used the title ambassador alone in letters of credence, but has since made the usual addition "extraordinary and plenipotentiary." The United States until 1893 did not appoint diplomatic agents of ambassadorial rank, and consequently foreign diplomatic agents accredited to Washington prior to that date were also of lesser rank. And within recent years numerous appointments of ambassadors have been made where formerly the diplomatic agent accredited held the rank of envoy only. (See § 209.)

§ 286. The derivation of ambassador seems to be as follows : Fr. *ambassadeur* (15th cent.), OSp. *ambaxador*, It. *ambasciatore*, from *ambaxade*, OSp. *ambaxada*, It. *ambasciata* ; all these from *ambactiäre*, a word not found but inferred to have existed, and formed on *ambactia*, *ambaxia* in the Salic and Burgundian laws, meaning charge, office, employment, name of an office formed on *ambactus*, a servant (? vassal, retainer). (See Oxford

<sup>1</sup> *L'Intermédiaire des Chercheurs* of Aug. 13-30, 1931, notes that the term "ministre plénipotentiaire" appears in the first edition of the Dictionnaire de l'Académie in 1694, and that Richelet's Dictionary, which omits it from the first edition (1680), includes it in that of 1719, with the note "mot écorché du latin," which is taken to signify that grammarians did not approve of it. Quotation is made from the Treaty of Münster (1648) "congressus plenipotentiariorum" and "legati plenipotentiarum"; and of somewhat later seventeenth-century instances of the French word—thus Cardinal Mazarin is "Plénipotentiaire de S.M. Très-Chrétienne" in the Treaty of the Pyrenees. Hatzfeld-Darmesteter gives as the first occurrence that in Balzac's address to the Regent in 1615. (*Notes and Queries*, Sept. 12, 1931.)

Dictionary and note to Rice Holmes' *Cæsar B.G.*, vi. 15; adaptation of a Gallic word.) "Le mot ambaxador était apparu au milieu du XIII<sup>e</sup> siècle" (Nys, *Origines du droit international*, p. 317). "Au XIV<sup>e</sup> siècle, la terminologie *ambaxiator continuus* atteste déjà la stabilité de l'institution." *Ambaxiator* occurs in the treaty between Henry V and Charles VI of France, of October 14, 1417 (Dumont, ii, pt. ii, 92; Rymer, IX, 517). "Du VIII<sup>e</sup> au X<sup>e</sup> siècle, dans les actes de la chancellerie, le verbe d'origine germanique *ambasciare* désigne l'intervention de quelque grand personnage dans le but de faire obtenir une concession du souverain; l'intermédiaire s'appelle l'*ambasciator*. Au XIV<sup>e</sup> siècle, ce dernier mot devient usuel et passe dans plusieurs langues" (R. de Maulde-la-Clavière, cited by Nys, *Le Droit international*, ii. 341).

§ 287. Article 2 of the Vienna *Règlement* says of ambassadors, legates and nuncios, that they alone have representative character, and by this was meant that agents of the first class only were considered as representing the person of their sovereign, though they did not receive all the honours due to the sovereign himself. Their privileges were originally founded on the supposition that they alone were competent to carry on negotiations with the sovereign himself. But this has no real signification in modern times, for they deal as a rule with the minister for foreign affairs, even in countries which preserve a monarchical form of government. It is sometimes supposed that an ambassador can demand access to the person of the head of the state at any time, but this is not the case, as the occasions on which the ambassador can speak with the head of the state are limited by the etiquette of the court or government to which he is accredited. The so-called "representative character" of the ambassador extends no farther, as Leibniz says, than

'*quantum fert ratio aut consuetudo.*' It gives him no right to go behind the back of the minister for foreign affairs, and negotiate with the sovereign direct. As Prince Bismarck rightly observed, no envoy or ambassador has the right of demanding a personal interview with the head of the state, nor can the sovereign in any state which possesses a parliamentary constitution negotiate apart from the advice of his responsible minister. Only in practice, and especially in the case of absolute rulers, has the easier access to the sovereign which an ambassador enjoys, any political importance, as was perceived in 1853 in the personal negotiations of Lord Stratford with the Sultan, and of the Prussian ambassador Graf v. d. Goltz with Napoleon III in 1866. The same ground is opposed to it from the side of the state to which he is accredited. If a

minister for foreign affairs has to endure that what he has settled with an envoy is upset by conversations of the latter with the sovereign, no steady (*folgerichtige*) policy is possible. Frederick the Great refused to have any ambassadors, because they were an inconvenience.<sup>1</sup>

§ 288. *Legates and Nuncios.*

The following may be regarded as an authoritative explanation of these two designations :

Legati in jure canonico sunt in triplici differentia, nempe legati *a latere*, legati missi seu nuncii apostolici, et legati *nati*. . . . Legati *a latere* alii sunt ordinarii et alii extraordinarii. Legati *a latere* ordinarii sunt cardinales qui a Summo Pontifice in alia provincia legationis officium cum jurisdictione, seu potestate ordinaria ad instar præsidium provinciarum, ut sunt legati Bononiæ, Ferrariæ, Romandiolæ, etc. [The so-called Legations.] . . . Legati *a latere* extraordinarii sunt illi qui mittuntur occasione alicujus emergentis necessitatis Ecclesiæ universalis, ut ad Concilia convocanda, vel etiam apud reges pro pace promovenda, sive pro Summi Pontificis paterno amore alicui regi in ejus adventu testificando, vel alia simili gravi causa. . . . Et quamvis pluries a Summis Pontificibus pro similibus causis fuerint missi episcopi, et alii non cardinales ; nunc autem constans praxis obtinuit non mitti nisi cardinales legatos *a latere*. . . . Et dato quod contingat, ut contingit, mitti alios non cardinales, non datur eis titulus legati *a latere*, sed missus nominatur, nuntius cum *potestate legati a latere*. . . . Legati missi, seu nuntii apostolici dicuntur, et sunt illi prælati, non cardinales, qui a Papa mittuntur ad alios principes pro obeundo apud ipsos munere legationis. . . . Et tales sunt nuntii Germaniæ, Franciæ, Hispaniæ, etc. et olim apocrisarii dicebantur Græco vocabulo. . . . Legati nati dicuntur, et sunt illi, quorum dignitati, quam in Ecclesia obtinent, munus legationis est annexum, et dicuntur legati nati, non quod a Sede Apostolica non hauriant auctoritatem, sed quod hanc illa dederit fixæ cuidam Ecclesiæ, et quicumque illi fuerit præfectus, una simul etiam fiat, ac veluti nascatur legatus apostolicus, utopte cujus munus suæ dignitati de jure annexum habet. Sic legatus natus a jure dicitur archiepiscopus Cantuariensis in Anglia, archiepiscopus Eboracensis item in Anglia. . . . Archiepiscopus Rhemensis in Gallia. . . . In Germania plures archiepiscopi legatorum natorum nomine insigniuntur, ut archiepiscopus Salisburgensis, elector Coloniensis, archiepiscopus Pragensis.<sup>2</sup>

§ 289. So that, strictly speaking, a nuncio is also a *legatus*, of the class called *missus*, being thus distinguished from the *legatus a latere*, who nowadays is always a cardinal, and from the *legatus natus*, who is not a diplomatic agent at all. In 1914

<sup>1</sup> Holtzendorf, iii. 641.

<sup>2</sup> Ferraris, *Prompta Bibliotheca, Canonica, Juridica, etc.*, iv. 1401. See also Schmelzing, ii. 120.

the Holy See was represented by *nonces apostoliques* in Bavaria, Austria-Hungary, Belgium, Brazil and Spain. Representatives with that title were accredited to France till 1905, and to Portugal till 1911. In 1836 Prussia refused to receive a *nuncio*, as a serious innovation, not only rejecting the proposal in the particular instance, but for all future time, and firmly and unequivocally.<sup>1</sup> France in 1921 received a *nuncio*.

§ 290. In 1931 the Holy See was represented by *nonces apostoliques* in the following countries: Argentine Republic, Austria, Bavaria, Belgium, Bolivia, Brazil, Chile, Colombia, Czechoslovakia, Dominican Republic, France, Hayti, Hungary, the Irish Free State, Italy, Latvia, Lithuania, Paraguay, Peru, Poland, Portugal, Prussia, Roumania, Spain, Switzerland, Venezuela and Yugoslavia.<sup>2</sup>

§ 291. Under Article 4 of the Vienna *Règlement* of 1815, the *nuncio* was regarded as the *doyen* of the resident diplomatic body. This might apparently be construed as making a *nuncio* the *doyen* in every country to which he may be accredited, or only in such countries as those to which a *nuncio* was in 1815 accredited, and to whom a privileged position was by the *Règlement* accorded. The British official interpretation of the article was in 1856 as follows: "It is intended that if by the invariable custom of any court the representative of the Pope had at the time of the Congress been allowed to take precedence of all other diplomatic agents of the same class, without reference to the date of his arrival, that custom should not be affected by the new regulation"; and this view has since been maintained. But in certain countries to which a *nuncio* has since been accredited the point has, in the local circumstances and as an act of courtesy, been conceded, with the practical unanimity of the resident diplomatic body. (For the functions of *doyen* see § 443).

### *Envoys*

§ 292. The ordinary custom now is to give to an agent of the second class the double title of envoy extraordinary and minister plenipotentiary. These constitute by far the largest class of diplomatic agents.

### *Internuncios*

§ 293. The Holy See employs for its ministers of the second class the title of *internonce apostolique*. From the Middle Ages onwards *internuntius* was in use to denote the diplomatic agent

<sup>1</sup> Holtzendorf, iii. 630.

<sup>2</sup> *Annuario Pontificio* (1931), 559.

of a lay sovereign, but was not so common as *ambasciator* and *orator*. It first occurs in the literature of the subject in 1595. Its signification was gradually restricted until from the seventeenth century onwards it became the technical term for the Austrian agent at Constantinople from 1678 to 1856.<sup>1</sup> Its use by Austria is thought to have been adopted in order to avoid conflicts of precedence with the French ambassador, to whom Soliman the Magnificent (1520-1566) had undertaken by treaty to accord precedence over the representatives of all other potentates, and it was continued down to the time of the Crimean War. The *internonce* always belonged to the second class of diplomatic agents, when there were only two.<sup>2</sup> It seems possible that the English ambassador at Constantinople ranked after the French, and unless there were also Spanish and Dutch diplomatic agents of the first class the Austrian *internuntius* had the third place. In any case he ranked before agents of the second class.<sup>3</sup> But Rivier says, "Ils n'ont aucune préséance sur les autres ministres de la même classe."<sup>4</sup>

§ 294. In 1931 the Holy See was represented by *internonces apostoliques* in Central America (Costa Rica, Honduras, Nicaragua, Panamá and Salvador), Luxemburg and the Netherlands.<sup>5</sup>

### *Ministers Plenipotentiary*

§ 295. These, being accredited to the head of the state, rank with envoys, according to Article 1 of the Vienna *Règlement*. There appears, therefore, to be no substantial difference in status between a minister plenipotentiary *en titre* and one who has the title of envoy extraordinary.

### *Ministers Resident*

§ 296. These, being accredited to the head of the state, form the third class of diplomatic agents, and rank, according to the rule adopted at the Conference of Aix-la-Chapelle in 1818, after ministers of the second class and before *chargés d'affaires*.

### *Chargés d'affaires*

§ 297. These are accredited to the minister for foreign affairs, in accordance with Article 1 of the Vienna *Règlement* and not to the head of the state (though instances have

<sup>1</sup> Heffter, *Das europäische Völkerrecht der Gegenwart*, 7te Ausg., 428.

<sup>2</sup> Krauske, *s.v.*

<sup>3</sup> C. O. L. v. Arnim, cited by Miruss, 115.

<sup>4</sup> *Principes du Droit des Gens*, i. 450.

<sup>5</sup> *Annuario Pontificio* (1931), 559.

occurred in which their credentials have been addressed to the latter).

A distinction is drawn between such as present letters of credence from their government formally appointing them on a permanent footing as *chargés d'affaires* and such as are only appointed temporarily, or are notified by the head of a mission as being left in charge of the mission during his absence or pending the appointment of his successor. The latter are styled *chargés d'affaires ad interim*, and rank after those accredited in a permanent capacity. In British practice, it is customary also to rank *chargés d'affaires ad interim* of embassies before *chargés d'affaires ad interim* of legations.

### *Questions of Precedence*

§ 298. By Article 4 of the Vienna *Règlement* diplomatic agents take rank in each class according to the date of the official notification of their arrival.

By Article 3, those entrusted with an extraordinary mission have no special claim to precedence on this ground. See, however, § 79 as regards ceremonial missions.

§ 299. In case of disagreement among members of the diplomatic body as to precedence, the rules adopted by the court or government to which they are accredited will be decisive (§ 447), and especially as to whether the question is governed by the date of official notification of arrival or by that of presentation of credentials.

§ 300. A question has occasionally arisen which was not decided by the regulations of 1815 or 1818, viz., what is to be the order of seniority when the death of the sovereign or a change in the form of government necessitates the presentation of new credentials by diplomatic agents formerly accredited. On this point see § 446.

§ 301. In Great Britain, besides the annual list of foreign diplomatic agents and their suites, furnished to the Sheriffs of London and Middlesex for the purpose of ensuring the enjoyment of diplomatic immunities (§ 341), monthly lists are prepared—the social list and the precedence list. In the latter the relative precedence of heads of missions is given.

§ 302. Formerly it was the practice of some governments to accredit representatives with the title of “agent and consul-general” or “commissioner and consul-general,” and these might be regarded as forming a fifth class. Thus, Great Britain was represented by an agent and consul-general in

Serbia till 1879, Roumania till 1880, Tunis till 1881, Siam till 1885, Bulgaria till 1908, and Zanzibar till 1913. In all these cases, except that of Siam, the country concerned was a vassal-state. In Egypt, a vassal-state of Turkey till 1914, the representatives of the Powers were "agent and consul-general."<sup>1</sup> Legally they were consul-general with a *bérat* from the Porte. But for a long time the title of agent (or diplomatic agent) had been recognised. Most of the Great Powers gave local diplomatic rank to their agents. Thus the Russian was envoy extraordinary and consul-general. Many of the others had also the honorary rank of envoy and minister, minister-resident or chargé d'affaires. But these titles did not affect precedence, which was regulated by seniority only, according to the date of arrival in Egypt. In Morocco the position was much the same, and the agents ranked according to seniority, no matter whether they were chargé d'affaires in the absence of a minister or not. Formerly Holland was represented in Japan by a consul-general and political agent. It may, however, be concluded that this class of diplomatic agent was, as a rule, appointed only to states which were not fully sovereign.

§ 303. Ullmann says<sup>2</sup>: "In 1875 a dispute about relative rank arose at Belgrade between the French consul-general and diplomatic agent Debains and the German consul-general v. Rosen, which was decided by the Servian Government in favour of the former.<sup>3</sup> The German Government recognised in the designation 'diplomatic agent' only an honorary title; the right of receiving diplomatic representatives belonged only to the suzerain. Eventually the affair was decided in the latter sense; the consuls appointed to semi-sovereign states with the title 'diplomatic agent' possess merely the character of consuls." But elsewhere he states that "to the fourth class of diplomatic agents belong generally all remaining diplomatic agents without regard to their further title, such as ministers resident, simple residents and consuls, accredited to Foreign Offices, if, as is the case in the East, they function as diplomatic agents."<sup>4</sup>

§ 304. In 1914, on the outbreak of war with Turkey and the establishment of a British protectorate over Egypt, His Britannic Majesty's representative at Cairo was given the rank of high commissioner, and this title is still borne by him, the counsellor of the mission having usually the personal rank of minister

<sup>1</sup> *Almanach de Gotha*.

<sup>2</sup> Ullmann, 166 n.

<sup>3</sup> Holtzendorf states that the German Government thereupon recalled Dr. Rosen and induced the Powers to agree that consuls-general in semi-sovereign states, irrespective of their title, have no diplomatic character at all (iii. 621).

<sup>4</sup> *Ibid.*, 172.

plenipotentiary. Other countries are now largely represented at Cairo by envoys extraordinary and ministers plenipotentiary.

§ 305. In 1927 the Committee of Experts for the Progressive Codification of International Law, which was set up at Geneva under the auspices of the League of Nations, requested that they might be furnished with the replies of the various governments to certain questions, among which were the following :

“ Is it desirable to revise the classification of diplomatic agents made by the Congresses of Vienna and Aix-la-Chapelle ? In the affirmative case, to what extent should the existing classes of diplomatic agents be amalgamated, and should each state be recognised to have the right, in so far as differences of class remain, to determine at its discretion in what class its agents are to be ranked ? ”

In the analysis made by the Committee of the answers received from the various governments to these questions it was shown that eleven governments replied to the questions in the negative, viz. Belgium, British Empire, France, Germany, India, Japan, New Zealand, Norway, South Africa, Spain and the United States. Four replied neither affirmatively nor negatively, viz. Australia, Brazil, Egypt and Roumania ; while twelve replied affirmatively, if briefly and sometimes with qualification, viz. Austria, Denmark, Estonia, Finland, Hungary, Latvia, the Netherlands, Poland, Portugal, Salvador, Sweden and Switzerland. Italy does not appear to have replied.

The report made to the Council of the League, as adopted by the Committee at its fourth session held in June 1928, states : “ While noting that the majority of the replies received recommend that the third question above mentioned (*i.e.* the question of revising the classification of diplomatic agents) should be placed on the agenda, the Committee has found the contrary opinion to be so strongly represented that, for the moment, it does not feel it can declare an international regulation of this subject matter to be realisable.” <sup>1</sup>

§ 306. The Pan-American Convention, signed at Havana on February 20, 1928, classifies diplomatic officers as ordinary and extraordinary, those permanently accredited being ordinary, and those entrusted with a special mission or those accredited to represent the government in international conferences and congresses or other international bodies being extraordinary. (See § 365.)

<sup>1</sup> *Report of the Committee* (A. 15, 1928, V).

## CHAPTER XVI

### IMMUNITIES OF DIPLOMATIC AGENTS

§ 307. THE immunities of diplomatic agents form an exception to the rule that all persons and things within a sovereign state are subject to its jurisdiction. Grotius says <sup>1</sup> :

“The common rule, that he who is in a foreign territory is subject to that territory, does, by the common consent of nations, suffer an exception in the case of ambassadors ; as being, by a certain fiction, in the place of those who send them (*senatus faciem secum attulerat, auctoritatem reipublicæ*, ait de legato quodam M. Tullius), and by a similar fiction they are, as it were, *extra territorium* ; and thus, are not bound by the Civil Law (*civili jure*) of the People among whom they live.”

§ 308. The obligation to exempt diplomatic agents from the local jurisdiction is a necessary consequence of the conditions on which they are sent and received, viz. that as representing sovereign states they owe no allegiance to the state to which they are accredited. Should they offend against its laws, complaint will justly be made to their government. But, without the consent of the latter, proceedings cannot be taken against them before the local tribunals.

“Le même droit des gens qui oblige les nations à admettre les ministres étrangers les oblige donc aussi manifestement à recevoir ces ministres avec tous les droits qui leur sont nécessaires, tous les privilèges qui assurent l'exercice de leurs fonctions. Il est aisé de comprendre que l'indépendance doit être l'un de ces privilèges. . . . Il importe qu'il n'ait point de pièges à redouter, qu'il ne puisse être distrait de ses fonctions par aucune chicane.” (Vattel.) <sup>2</sup>

“Le droit des gens a voulu que les princes s'envoyassent des ambassadeurs, et la raison, tirée de la nature de la chose, n'a pas permis que ces ambassadeurs dépendissent du souverain chez qui ils sont envoyés, ni de ses tribunaux. Ils sont la parole du prince qui les envoie, et cette parole doit être libre.” (Montesquieu.) <sup>3</sup>

<sup>1</sup> Whewell's edition, ii. 209 (Book II, chap. 18, § 4, no. 5) ; see also Nys, *Droit International*, ii. 368.

<sup>2</sup> *Droit des Gens*, iv. ch. 7, § 92.

<sup>3</sup> *Esprit des Lois*, xxvi. ch. 21.

"The privilege of a public minister is to have his person sacred and free from arrests, not on his own account, but on the account of those he represents, and this arises from the necessity of the thing, that nations may have intercourse with one another in the same manner as private persons, by agents when they cannot meet themselves." (Lord Chancellor Talbot in *Barbuit's case*.)<sup>1</sup>

"A sovereign committing the interests of his nation with a foreign Power to the care of a person whom he has selected for that purpose, cannot intend to subject his minister in any degree to that Power ; and therefore a consent to receive him implies a consent that he shall possess those privileges which his principal intended he should retain, privileges which are essential to the dignity of his sovereign, and to the duties he is bound to perform." (Chief Justice Marshall in *Exchange v. Macfaddon*, Supreme Court of the United States.)<sup>2</sup>

§ 309. These immunities are founded on common usage and tacit consent ; they are essential to the conduct of the relations between independent sovereign states ; they are given on the understanding that they will be reciprocally accorded, and their infringement by a state would lead to protest by the diplomatic body resident therein, and would prejudicially affect its own representation abroad.<sup>3</sup>

§ 310. The term extritoriality (or extraterritoriality) is that used to denote the immunities accorded to foreign sovereigns, and to diplomatic agents, their families and staffs, as well as to foreign residents in certain non-Christian countries in virtue of special treaty provisions. The use of the term, like that of "diplomacy," is more modern than the application of the principle. The word "extraterritorialitas" was used by Wolff in 1749, and G. F. de Martens, writing towards the end of the eighteenth century, converted it into *extritorialité* and *Exterritorialität* in French and German respectively.<sup>4</sup> Though used of the agent in his wholly representative capacity, it is more in accordance with the actual position to interpret it as denoting that he is not subject to the authority or jurisdiction of the state to which he is accredited.

"C'est donc très convenablement aux devoirs de nations, et conformément aux grands principes du droit des gens, que par l'usage et le consentement de tous les peuples, l'ambassadeur ou ministre public est aujourd'hui absolument indépendant de toute juridiction de l'État où il reside." (Vattel.)<sup>5</sup>

"L'Exterritorialité a sa base juridique, d'une part dans la renonciation à l'exercice du pouvoir territorial (exemption du

<sup>1</sup> Cas t. Talbot, 281 ; Hudson, *Cases on International Law*, 875.

<sup>2</sup> 7 Cranch, 116 ; Hudson, *op. cit.*, 546.

<sup>3</sup> Hurst, *Les Immunités Diplomatiques*, Cours de La Haye (1926), ii. 123.

<sup>4</sup> Nys, *Droit International*, ii. 371.

<sup>5</sup> *Op. cit.*, iv. ch. 8, § 110.

ministre public) ; d'autre part dans l'assurance de l'exercice du pouvoir exterritorial (sujétion du ministre public). Le consentement des États est formel ou tacite. La réception de l'ambassadeur, si aucune volonté n'a été exprimée de part ou d'autre, est en même temps, pour l'État qui le reçoit une renonciation tacite, pour l'État qui l'envoie une acceptation tacite, de l'exercice de son pouvoir sur le ministre public. Cette présomption de l'exterritorialité est basée sur la reconnaissance que l'ambassadeur ne peut, sans son appui, remplir la tâche qui lui incombe ; c'est pour lui *conditio sine qua non*.”<sup>1</sup>

§ 311. The immunities and privileges of diplomatic agents extend to exemptions from criminal, civil, police, fiscal and ecclesiastical jurisdiction. They are, however, best considered under their various heads, and of these the foremost are Inviolability, Freedom of Communication, and Exemption from the Local Jurisdiction. Others will be referred to later, in this and the following chapters.

### *Inviolability*

§ 312. This term implies a higher degree of protection to the person of the diplomatic agent and his belongings than is accorded to a private person. It extends to his family, suite, servants, houses, carriages, goods, archives, documents of whatever sort, and to his official correspondence carried by his couriers or messengers.

§ 313. It is the duty of the government to which they are accredited to take all necessary measures to safeguard the inviolability of diplomatic agents and to protect them from any act of violence or insult. Should such an act be committed by a public official adequate reparation is due, and in extreme cases serious consequences have sometimes followed. One of the most noted is that of the arrest of the Russian ambassador in London in 1708, which led to the passing of the Act 7 Anne, cap. 12, “to prevent the like insolences for the future.”<sup>2</sup>

In 1708 M. de Mathveof (Matveev), the Russian ambassador, who was about to present his letters of recall, was arrested, with some degree of violence, in the streets of London, at the instigation of certain merchants, to enforce payment of debts. He was shortly afterwards released, on bail being offered by his friends. On hearing of the incident, the Queen commanded the Secretary of State to express regret to the ambassador, who was informed that the offenders would be brought to trial, and punished with the utmost rigour of the law. He was, however, in no way satisfied

<sup>1</sup> Heyking, *L'Exterritorialité*, Cours de La Haye (1925), ii. 265.

<sup>2</sup> *Br. and For. State Papers*, i. 993.

with this apology, and hurriedly left the country, without presenting his letters of recall, or availing himself of any of the courtesies placed at his disposal. To make amends, Lord Whitworth, the British envoy at St. Petersburg, was accredited as special ambassador, for the purpose of conveying to Peter the Great at a public audience the expression of the Queen's regret for the insult offered to his ambassador, and it is recorded that the Czar's carver and cupbearer proceeded to his residence in a court carriage to fetch him to the audience, followed by twenty other coaches conveying court personages and gentlemen of the embassy.<sup>1</sup>

In 1915, at a time when public feeling ran high, the Greek naval attaché at Constantinople was openly insulted by a Turkish police agent. For this offence official apologies were rendered in person by the Turkish prefect of police, the police agent was dismissed and punished, and a public announcement was made by the Turkish Government of the steps taken to give satisfaction to the Greek Government.<sup>2</sup>

§ 314. More serious instances are the Boxer rising in China in 1899, when the German minister and the Japanese chancellor were killed by Chinese troops and the foreign legations besieged; and the assassination at Moscow and Petrograd in 1918 of the German ambassador and the British naval attaché; while an instance in which it was alleged that neglect to afford proper protection had been shown was the assassination in Poland in 1927 of M. Voikov, Soviet minister at Warsaw, though he had been offered police protection. While of a different class, the case of M. Vorowski, Soviet observer to the Lausanne Conference, who was murdered in Switzerland in 1923, may also be mentioned, since it formed the subject of serious complaint by the Soviet Government to the Swiss Government, though the latter had not been officially informed of his presence in Switzerland.

§ 315. A government should ensure that proper means exist for the punishment of offences committed by individuals against diplomatic agents. In most countries special laws have been enacted for the purpose.

“Every person who assaults, strikes, wounds, imprisons, or in any other manner offers violence to the person of a public minister, in violation of the law of nations, shall be imprisoned for not more than three years, and fined at the discretion of the court.” (Revised Statutes of the United States, § 4062.)

§ 316. But if no such special law exists, the ordinary procedure of the penal law should be employed.<sup>3</sup>

<sup>1</sup> Ch. de Martens, *Causes célèbres, etc.*, i. 68, etc.

<sup>2</sup> Hurst, *op. cit.*, ii. 126.

<sup>3</sup> Hurst, *op. cit.*, ii. 130.

The punishment of a crime or offence depends upon the rules of the penal law and the criminal procedure in force in the country. The executive power of that country cannot as a rule intervene in the administration of justice. If, therefore, there is no other procedure for dealing with offences against international law, the judgment of those offences must be remitted to the ordinary tribunals. The offended state has no ground for reclaiming a departure from the ordinary process of justice, and should be satisfied even if the accused might be acquitted or punished by the infliction of a lesser penalty than that state might deem just. (Bluntschli.)<sup>1</sup>

§ 317. The above may, however, be open to the qualification that the law provides a proper means of punishment, and that the trial is properly conducted.

“Le moyen ordinaire qu'on emploie pour la réparation d'une injustice causée à l'ambassadeur, c'est de lui rendre satisfaction par des excuses faites soit à sa personne, soit à l'État qu'il représente, par l'envoi d'une députation solennelle, par le paiement d'une indemnité, par la punition du coupable (bien entendu d'après les lois locales).”<sup>2</sup>

§ 318. In 1912 the *United States Chargé d'affaires* in Cuba was assaulted by the reporter of a Cuban journal, who was arrested, but was released on bail by the Cuban court, with the remark that it was indifferent whether the person attacked was the American minister or a Cuban of the lowest class. The United States Government protested against this interpretation of international law, and the offender was ultimately sentenced to two and a half years' imprisonment.<sup>3</sup>

§ 319. Inviolability, in common with other immunities, attaches from the moment that the diplomatic agent has set foot in the country to which he is sent, if previous notice of his mission has been imparted to the government of the receiving state and accepted, or at any rate as soon as he has made his public character known by the production either of his passports or his credentials. It extends, as far as the state to which he is accredited is concerned, over the period occupied by him in his arrival, his sojourn, and his departure within a reasonable time after the termination of his mission. Should his letters of credence expire, owing to the death of his own sovereign or the sovereign to whom he is accredited, he is nevertheless accorded all the usual immunities during the interval before he receives fresh credentials.

<sup>1</sup> *Das Moderne Völkerrecht*, etc. (1872), § 467.

<sup>2</sup> Heyking, *op. cit.*, ii. 272.

<sup>3</sup> Deák, *Classification, etc., des Agents diplomatiques*, *Revue de Droit International* (1928), 201.

The Pan-American Convention of February 20, 1928, signed at Havana, lays down for the signatory states the following rules: "Article 22.—Diplomatic officers enter upon the enjoyment of their immunity from the moment they pass the frontier of the state where they are going to serve and make known their position. The immunities shall continue during the period that the mission may be suspended, and even after it shall be terminated, for the time necessary for the officer to be able to withdraw with the mission."

§ 320. It is not affected by the breaking out of war between his own country and that to which he is accredited.<sup>1</sup> In such an event, it is the duty of the government to which he is accredited to take every precaution against insult or violence directed against him or any of the persons, whether belonging to his family or suite, covered by the right of inviolability, or against his residence or baggage, and to allow him to withdraw with his suite in all security. In case of need, special facilities should be afforded him, free of expense,<sup>2</sup> and after his departure the embassy house and its contents should be respected.

§ 321. It is, of course, expected that, on his part, a diplomatic agent will pay due regard to the laws and regulations for the maintenance of public order and safety in the state where he is appointed to reside, and abstain from any act which might call for the imposition of restraint to prevent injury or detriment to others or give rise to reasonable ground for complaint. The correctness of his own conduct will afford the best guarantee of the inviolability claimed by him. While in general exempted from police jurisdiction, this does not imply a right to disregard measures necessary for the well-being of the community.

"Les règlements de police sont pour l'ambassadeur *lex*, sed *lex imperfecta*, car toute punition et toute contrainte à son égard doivent être exclues. Si l'ambassadeur se croit affranchi de toute mesure de police, par exemple s'il trouble la tranquillité et la sécurité publique, ourdit des conspirations ou commet enfin des crimes, l'État qui reçoit ne peut rester indifférent à ces agissements et la police doit employer des mesures de prévention et de sécurité. Le gouvernement local adresse dans ce cas une plainte au gouvernement de l'État qui envoie."<sup>3</sup>

In 1927, in a case before the Cour de Cassation of Costa Rica, regarding an assault committed on the *Peruvian chargé d'affaires* by one Araya, it was held that this being the natural and logical consequence brought about by the offended person himself—who had

<sup>1</sup> Phillimore, ii. 183.

<sup>2</sup> Hurst, *op. cit.*, ii. 231.

<sup>3</sup> Heyking, *op. cit.*, ii. 275.

previously insulted and threatened to strike the accused—could not be regarded as a violation of diplomatic immunity.<sup>1</sup>

§ 322. If, on the other hand, an offence should be committed against him, his proper course is to lodge complaint with the government to which he is accredited, and, failing satisfaction, to turn to his own government for the means of redress.

### *Freedom of Communication*

§ 323. As it is essential for the fulfilment of his mission that a diplomatic agent should be able to communicate freely and in all security on matters in which he is engaged, it is in general recognised that couriers who bear official despatches to and from the mission are exempt from the local jurisdiction, even in third countries which they may have to traverse while engaged in the performance of their duties. They should, of course, carry official passports clearly defining their status.

“For the discharge and expedition of his business and negotiations, an uninterrupted exchange of correspondence with his own court or government is necessary to the envoy. He employs messengers, whom he despatches to convey information to his sovereign, or to his colleagues at other courts with the least possible delay. The correspondence of an envoy sent through the ordinary post comes under the special protection of international law, the messengers despatched by him to his court and *vice versa* enjoy, in times of peace, inviolability for their person and the despatches they carry—complete inviolability, even in the territory of a third state. They must . . . carry proper passports. To such messengers must be accorded every possible facility for pursuing their journey.”<sup>2</sup>

“To ensure the safety and secrecy of the diplomatic despatches they bear, couriers must be granted exemption from civil and criminal jurisdiction, and afforded special protection during the exercise of their office. It is therefore usual to provide them with special passports. It is particularly important to observe that they must have the right of innocent passage through *third* states, and that, according to general usage, those parts of their luggage which contain diplomatic despatches, and are sealed with the official seal, must not be opened and searched.”<sup>3</sup>

§ 324. Within recent years special arrangements have been made between several countries under which bags, officially sealed, are transmitted through the ordinary post to and from their diplomatic missions abroad, and are exempted from all interference.

<sup>1</sup> *Annual Digest* (1927–28), Case No. 243.

<sup>2</sup> Schmeling, ii. 224.

<sup>3</sup> Oppenheim, i. § 405.

*Immunity from Local Criminal Jurisdiction*

§ 325. If a diplomatic agent commits an ordinary crime in the country to which he is accredited he cannot be tried or punished by the local courts. No case can be cited where, without his consent or that of his government, such a course has been followed.<sup>1</sup> But in such a case his government would doubtless be asked to recall and punish him.

“Déjà le droit des gens universel offre des arguments plus décisifs pour exempter le ministre étranger de la juridiction criminelle de l'État auprès duquel il réside que pour l'exempter de la juridiction civile ; la nature des actes inséparables d'une procédure criminelle, et toutes les suites qu'on en pourrait craindre pour le sort des négociations semblent s'opposer à l'exercice d'une telle juridiction.”<sup>2</sup>

§ 326. But an offence of a flagrant character might justify the state to which he is accredited in seizing his person and expelling him. Certain incidents of this kind have happened in the past, though now of little more than historical interest.

In 1716 *Count Gyllenborg*, Swedish minister in London, entered into communication with the leading Jacobites, in furtherance of a plot which aimed, amongst other things, at the deposition of George I from the throne. Görtz, a secret agent of Charles XII of Sweden, at the same time pursued negotiations in Holland and elsewhere for funds to prosecute these designs. The plot was discovered, Gyllenborg was arrested, and his papers seized. The diplomatic body protested, but are said to have withdrawn their protest. Görtz was also arrested in Holland at the request of the British Government. As a reprisal Jackson, the British minister at Stockholm, was arrested there, and the Dutch minister forbidden to appear at the Swedish court. Eventually Gyllenborg was exchanged for Jackson, and Görtz set at liberty in Holland.<sup>3</sup>

In 1718 *Prince de Cellamare*, Spanish ambassador at Paris, conspired to deprive the Duc d'Orléans of the Regency and transfer it to his master the King of Spain. The conspiracy was discovered, and Cellamare was placed under arrest. The resident diplomatic body declined to take up the case. Meanwhile in Spain orders had been given for the arrest of the French ambassador, but he managed to reach the frontier in safety. Cellamare was thereupon conducted to the Spanish frontier and expelled from France.<sup>4</sup>

§ 327. Other cases in which the offence, though flagrant, was not followed by arrest are mentioned in Chapter XXI (Termination of Mission). A notable case of the past is also

<sup>1</sup> Hurst, *op. cit.*, ii. 164.

<sup>2</sup> G. F. de Martens, *Précis du Droit des Gens*, ii. 90.

<sup>3</sup> Ch. de Martens, *op. cit.*, i. 83.

<sup>4</sup> *Ibid.*, i. 139.

that of Dom Pantaleon de Sa, who in 1653 was accused of murder in London, and his surrender forcibly compelled from the Portuguese ambassador's house. He was placed on trial, and being found guilty was executed. But in this case the claim to privilege could not be maintained as he had only a dormant commission, and his plea of relationship to the ambassador did not suffice.

§ 328. A decree of the Soviet Union of January 14, 1927, framed on a basis of reciprocity, declares that diplomatic representatives and members of their missions (counsellors, first, second, and third secretaries and attachés—including commercial, financial, military, and naval) enjoy personal immunity in virtue of which they cannot be subjected to arrest or to detention of an administrative or judicial character; and are not amenable to the jurisdiction of the judicial institutions of the U.S.S.R. and of the Allied Republics on a criminal charge, except with the consent of the foreign state concerned.

#### *Immunity from Local Civil Jurisdiction*

§ 329. It is likewise generally recognised that a diplomatic agent is exempt from the jurisdiction of the local civil tribunals, though some writers have been inclined to place limitations on this exemption. In Holland and England their immunity was recognised as far back as the seventeenth century, and both there and in France and Prussia special enactments were passed to safeguard the right.

§ 330. The Statute of 7 Anne, c. 12, declares that :

“all writs and processes that shall at any time hereafter be sued forth or prosecuted, whereby the person of any ambassador, or other publick minister of any foreign Prince or state, authorised and received as such by Her Majesty, Her Heirs or Successors, or the domestick, or domestick servant of any such ambassador, or other publick minister, may be arrested or imprisoned, or his or their goods or chattels may be distrained, seized or attached, shall be deemed and adjudged to be utterly null and void, to all intents, constructions, and purposes whatsoever.”

§ 331. In 1823, in the case *Novello v. Toogood*,<sup>1</sup> Lord Chief Justice Abbott, in speaking of this Act, said that it was only declaratory of the common law,<sup>2</sup> and that it must therefore be construed according to the common law, of which the law of nations must be deemed a part.

<sup>1</sup> 1 B. & C. 554.

<sup>2</sup> This is now the subject of controversy: see Adair, *The Extritoriality of Ambassadors in the 16th and 17th Centuries* (1929), 88, 237 *et seq.*, and in *Cambridge Historical Journal*, ii. no. 3, 290-7; and Berriedale Keith and Adair in *Journal of Comparative Legislation*, xii. (1930), 126-8, and xiii. (1931), 133-7.

“ Les agents diplomatiques sont les représentants des États. C’est en raison de cette qualité que ces privilèges leur sont accordés, et c’est en raison de cette qualité que des privilèges leur sont reconnus par les États sur le territoire desquels ils résident. Cette matière relève donc exclusivement des relations entre les États, et fait partie par conséquent du droit international public.”<sup>1</sup>

§ 332. The corresponding United States statute is § 4063 of the Revised Statutes of the United States :

“ Whenever any writ or process is sued out or prosecuted by any person in any court of the United States, or of a state, or by any judge or justice, whereby the person of any ambassador or public minister of a foreign prince or state, authorised and received as such by the President, or any domestic or domestic servant of any such minister, is arrested or imprisoned, or his goods or chattels are distrained, seized or attached, such writ or process shall be deemed void.”

§ 333. In France the law and practice are the same, and under the decree 13 ventôse, an II, a diplomatic agent who was about to quit his post on presenting his letters of recall, would not now be subjected to the treatment accorded in 1772 to the Baron von Wrech, minister of Hesse-Cassel, who was refused his passports until his creditors had been satisfied.<sup>2</sup> In Austria the civil code confers on a diplomatic agent whatever immunities are established by international law. The German code exempts from local jurisdiction diplomatic agents and their suites. In the Soviet Union a decree of January 14, 1927, declares that diplomatic representatives and the members of their missions (counsellors, first, second and third secretaries, and attachés, including commercial, financial, military and naval) are amenable to the jurisdiction of the judicial institutions of the U.S.S.R. and of the Allied Republics, for civil offences only within the limits laid down by international law or by agreements with the states concerned.

The Pan-American Convention of February 20, 1928, signed at Havana, which says in its preamble that it incorporates the principles generally accepted by all nations, lays down for the signatory states the following rules : “ Article 19.—Diplomatic officers are exempt from all civil or criminal jurisdiction of the state to which they are accredited ; they may not, except in the case when duly authorised by their government, waive immunity, be prosecuted or tried unless it be by the courts of their own country.”

<sup>1</sup> Hurst, *op. cit.*, ii. 141.

<sup>2</sup> Ch. de Martens, *op. cit.*, ii. 110.

§ 334. Certain noteworthy cases in the English, French and Belgian courts are given below :

(1) In 1854, in the case *Taylor v. Best, Drouet, Sperling and Clarke*, in which M. Drouet, First Secretary of the Belgian Legation in London, and one of the directors of a mining company, was one of the defendants, his attorney, upon his instructions, accepted service on his behalf of a writ issued against the directors to recover deposits on shares, and entered an appearance thereto. Afterwards M. Drouet claimed privilege. It was held by the court that, having charge of the executive of the legation, and acting in the absence of the minister as chargé d'affaires, he was a public minister to whom the privilege of ambassador applied ; that his exemption (being one at common law) was not lost by his trading in England (as that of a servant would be under the Act of Anne) ; but that having submitted to the jurisdiction, he could not succeed in his application for the action to be stayed or his name to be struck out of the proceedings.<sup>1</sup> The court indicated that if the question of executing a judgment against M. Drouet had been in question his privilege would have protected him.

(In the case of *In re the Republic of Bolivia Exploration Syndicate*,<sup>2</sup> 1913, Astbury, J., referred to the above case, and said of it : " Having appeared and taken steps and allowed the action to go through several stages, he was not allowed subsequently to insist on his privilege so as to cause the action to abate to the prejudice of the plaintiff and his co-defendants, who had incurred expense in reliance on his apparent waiver." See also §§ 334 (6) and 347 (2) (6)).

(2) In 1859, in the case of the *Magdalena Steam Navigation Company v. Martin*, the Guatemalan minister in London claimed immunity against answering an action for debt, being a call on shares on the winding-up of the company. The court held that " the writs and processes described in the 3rd section (of the Statute of 1708) are not to be confined to such as directly touch the person or goods of an ambassador, but extend to such as, in their usual consequences, would have this effect. . . . It certainly has not hitherto been expressly decided that a public minister duly accredited to the Queen of a foreign state is privileged from all liability to be sued here in civil actions ; but we think that this follows from well-established principles, and we give judgment for the defendant." <sup>3</sup>

(3) 1868.—*Case of Tchitchérine, before the Court of Appeal at Paris.*

A certain Léonce Dupont, manager of a newspaper, *La Nation*, having become bankrupt, it was discovered in the course of the proceedings that he had lent his name to Tchitchérine, counsellor of the Russian embassy at Paris, who in the interests of his government had furnished funds to start the journal, and had undertaken to support it, on various conditions, of which proof was furnished.

<sup>1</sup> 14 C. B. 487.

<sup>2</sup> L.R. [1914] 1 Ch. 139.

<sup>3</sup> 2 El. & El. 94.

By its judgment of January 15, 1867, the commercial court at Paris decided that it had jurisdiction in the matter, holding that if the diplomatic immunities to which Tchitchérine appealed belonged to the representatives of foreign governments in order that they should not be molested in the discharge of their functions, these immunities could not be extended to them when they entered into commercial transactions in their private interest.

The Court of Appeal reversed this decision on the following grounds : Seeing that it is an established fact, and not disputed, that Tchitchérine is attached as counsellor to the embassy of H.M. the Emperor of Russia to H.M. the Emperor of the French, and that thus he had in France the character of a foreign diplomatic agent ; seeing that it is an established principle of the Law of Nations that the diplomatic agents of a foreign Government are not subject to the jurisdiction of the courts of the country to which they are sent ; that this principle is based on the nature of things which in the respective interest of the two nations does not allow these agents to be exposed in their person or property to legal proceedings, which would not leave to them complete liberty of action, and would embarrass the international relations of which they serve as intermediaries ; that in France this principle has been specially recognised by the decree of the 13th ventôse, an II, from which it follows that claims which may be put forward against the envoys of foreign governments must be stated and pursued through diplomatic channels ; seeing that supposing an exception could be made to this principle in the case of diplomatic agents who devote their attention to commercial operations and by reason of such commercial operations, the contract by which Tchitchérine secured the right of directing the publication of the newspaper *La Nation* would be of a character quite other than that of a commercial speculation entered into in private interest ; it was erroneously therefore that the court maintained cognisance in the claim made by the trustee of the bankruptcy of Dupont and by Dupont himself, and ruling upon the appeal of Tchitchérine says that the commercial court of the Seine was not competent to take cognisance of the claim put forward by him and Dupont.

(4) 1891. *Case of Count Errembault de Dudzeele before the Cour de Cassation at Paris.*

In July 1889 the Civil Court of the Seine condemned in default Count Errembault de Dudzeele, counsellor of the Belgian legation, to payment of a sum of fr. 377.05. As he did not appeal within the legal period against this decision, an appeal was entered against it, at the instance of the French Ministry of Justice, in the interest of the law. The decision of the lower court was reversed by a judgment of January 10, 1891, from which the following passages may be quoted :

“La Cour, vu le décret de la Convention nationale du 13 ventôse, an II, défendant à toute autorité constituée d’attenter en aucune manière à la personne des envoyés des gouvernements étrangers.

Attendu qu'une des conséquences du principe rappelé dans le décret susvisé est que les agents diplomatiques des puissances étrangères ne sont pas soumis en règle générale à la juridiction des tribunaux français ; attendu que cette immunité doit s'étendre à toutes les personnes faisant officiellement partie de la légation. Attendu que l'incompétence des tribunaux français en cette matière étant fondée sur le besoin d'indépendance réciproque des différents États et des personnes chargées de les représenter, ne peut fléchir que devant l'acceptation certaine et régulière que feraient les dites personnes de la juridiction de ces mêmes tribunaux. . . .

"Les immunités ont été reconnues de même aux attachés d'ambassade par le tribunal de la Seine par jugement du 10 août, 1855. 'Attendu, dit ce jugement, qu'Aurelio Pinto justifie qu'il est attaché à la légation impériale du Brésil en France ; que conformément aux règles du droit des gens, le caractère dont il est revêtu ne permet pas qu'il soit traduit devant la juridiction française pour une affaire purement personnelle, . . . se déclare incompetent. . . .' En Allemagne la loi nous dit : 'Les tribunaux nationaux n'ont pas juridiction sur les chefs et les membres des missions diplomatiques accréditées auprès de l'empire Allemand' (Code d'organisation judiciaire de l'empire Allemand, art. 18). En Autriche nous trouvons la disposition suivante : 'Les ambassadeurs, les chargés d'affaires, et les personnes qui sont à leur service jouissent des franchises établies par le droit des gens et par les traités publics' (Code civil autrichien, art. 38)."<sup>1</sup>

(5) In 1897 the Cour de Cassation at Brussels, at the instance of the Belgian Ministry of Justice, and after examination of the authorities and precedents, quashed the decision of the lower court, which had condemned the *military attaché of the Turkish legation*, in default, to payment of an amount claimed by a veterinary surgeon for services rendered.<sup>2</sup>

(6) 1913.—*In re Republic of Bolivia Exploration Syndicate, Ltd.*

This was an action in the Chancery Division of the High Court of Justice at London. The liquidator of the above company having issued a summons against the directors, among whom was M. R. E. Lembcke, 2nd Secretary of the Peruvian Legation, and the auditors claiming damages for various acts of misfeasance, M. Lembcke, on the hearing of the summons, asserted diplomatic privilege, with the sanction and at the wish of the Peruvian Legation, although he had previously entered an unconditional appearance to the summons.

In this case a number of previous cases bearing on the point came under review, and amongst others that of *Taylor v. Best*, and the *Magdalena Steam Navigation Co. v. Martin*. (See above.)

*Held*: Both under the common law and under the Diplomatic Privileges Act, 1708, a diplomatic agent accredited to the Crown by a foreign state is absolutely privileged from being sued

<sup>1</sup> Clunet (1891), 137.

<sup>2</sup> Clunet (1897), 839.

in the English courts and any writ issued against him is absolutely null and void.

The diplomatic privilege can be waived, if at all, only with full knowledge of the party's rights, and only with the sanction of his sovereign or legation.

Except in cases like *Taylor v. Best*, where the agent is merely joined as a formal defendant, it is doubtful if such waiver is possible.

"Whatever the true view of M. Lembcke's conduct in entering appearance and taking the subsequent steps, it is clear that the summons must prove abortive against him. No judgment or execution can be enforced or levied against him, and the authorities show the impropriety of allowing the action to go on merely for the purpose of defining his liability."<sup>1</sup>

§ 335. The immunity of the diplomatic agent extends in general to events which may have occurred prior to his reception, and on the termination of his mission it is generally recognised that it continues for such reasonable time as may be necessary for him to complete the work of his mission before departing from the country.

Spanish law appears to prescribe that an envoy, while exempt from being sued in respect of obligations contracted before the commencement of the mission, is not so for those incurred during its continuance. Portuguese law seems to be to the opposite effect. And in France the immunity apparently now ceases, at any rate in the case of a member of the staff, as soon as his appointment terminates, if the action is begun after that date.

(1) In 1859, in the case of the *Magdalena Steam Navigation Company v. Martin*, in the English courts, Lord Chief Justice Campbell observed: "There can be no execution while the ambassador is accredited, nor even when he is recalled, if he only remains a reasonable time in this country after his recall."<sup>2</sup>

(2) In 1894, in the case *Musurus Bey v. Gadban*, in the English courts, the question of freedom from suit of ambassadors was raised in connection with a liability incurred. The plaintiff was the executor of Musurus Pacha, who had been Turkish ambassador at London, and had presented his letters of recall on December 7, 1885, but had continued to reside in England until February 1886. In an action by the plaintiff, as such executor, against the defendants to recover moneys collected by them, they counterclaimed in respect of a debt alleged to be due to them by Musurus Pacha, and the question arose whether their claim was not barred by the lapse of six years from the date of its accrual. Accordingly it became necessary to determine whether the defendants had an effective cause of action against the ambassador during the period between

<sup>1</sup> L. R. [1914] 1 Ch. 139.

<sup>2</sup> El. & El. 94. (See 334 (2) above.)

December 7, 1885, and February 1886, and it was held by the Court of Appeal that the point was decided in the case of *Magdalena Steam Navigation Co. v. Martin*. (See § 334 (2).) "It was there held that there could be no execution against an ambassador while he is accredited, nor even when he is recalled, if he only remains a reasonable time in this country after his recall, and that is precisely what Musurus Pacha did in the present case. During these two months Musurus Pacha was in the same position as he was in before his recall as to immunity from being sued." Accordingly the plaintiff could not set up the Statute of Limitations against the defendants' counter claim.<sup>1</sup>

(3) In 1906, the French Government having broken off diplomatic relations with Venezuela, and entrusted their interests to the United States, the Venezuelan Government contended that the *French Minister* became subject to the local law immediately his representation ceased. The resident diplomatic body entered a protest against this view.<sup>2</sup> (See § 511.)

(4) In 1929 the Netherlands tribunal at The Hague, in the case *Banco de Portugal v. Marang, etc.*, held that the immunity from civil jurisdiction enjoyed by a foreign diplomatic representative ceases on the termination of his mission, except for the time required by him to liquidate his affairs.<sup>3</sup>

§ 336. The following are recent French judgments on the liability of members, or ex-members, of the staff of a diplomatic agent.

(1) In 1921 the French Cour de Cassation, at the instance of the Procureur-Général, reversed a judgment pronounced against the *Secretary of the Persian legation*, observing: "Attendu qu'il importe peu que l'obligation contractée par l'agent diplomatique l'ait été à une date antérieure ou postérieure à son entrée en fonctions; qu'il suffit qu'il soit investi de son caractère officiel au moment où des poursuites sont dirigées contre lui."<sup>4</sup>

(2) In 1925 the Cour d'Appel at Paris condemned *Mr. Belin*, ex-Secretary of the United States Embassy (in an action begun after he had ceased to be a member of that mission), to payment of damages in respect of an accident caused by his motor car, though this occurred while he was still a member of the mission, observing: "Attendu que l'immunité diplomatique érigée dans l'intérêt des gouvernements et non dans celui des diplomates, ne s'étend pas au delà de la mission; que la thèse contraire aboutirait à créer au profit de l'agent diplomatique une sorte de prescription et une irresponsabilité indéfinie; rejette comme mal fondée l'exception soulevée par Belin, et le déclare civilement responsable."<sup>5</sup>

<sup>1</sup> L.R. [1894] 2 Q. B. 352.

<sup>2</sup> *Foreign Relations of the United States* (1906), 1448; de Boeck, *l'Expulsion et les difficultés internationales qu'en soulève la pratique*, Cours de La Haye (1927), iii. 509.

<sup>3</sup> Hill, *American Journal of International Law* (1931), 259.

<sup>4</sup> Clunet (1921), 922. <sup>5</sup> Clunet (1926), 64.

The Pan-American Convention of February 20, 1928, signed at Havana, lays down for the signatory states the following rules : " Article 20. The immunity from jurisdiction survives the tenure of office of diplomatic officers in so far as regards actions pertaining thereto ; it may not, however, be invoked in respect to other actions except while discharging their diplomatic functions " (*sic*).

§ 337. A distinction drawn by some writers between acts performed by the agent in an official capacity and those performed in a private capacity, and, again, the opinion that the immunity should not go beyond cases where submission to the jurisdiction would impair the free exercise of his functions, do not find any general acceptance, though certain much criticised decisions of the Italian tribunals in 1915 and 1922 may be mentioned.

(1) In 1883 the French Cour d'Appel at Lyons gave the following decision in an action brought against the *Comte de Bruc*, diplomatic agent of San Marino at Paris, concerning alterations effected in his private property situated at Ste. Foy-les-Lyon :

" La Cour, considérant que la position des représentants étrangers en France est réglée par le décret du 13 ventôse, an II, qui interdit à toute autorité d'attenter en aucune manière à la personne d'un envoyé d'un gouvernement étranger ; considérant que les auteurs ayant écrit sur le droit international ont eu quelques divergences entre eux ; que l'on a cherché à faire une distinction entre la personne officielle et la personne privée, de même qu'entre les actes accomplis en qualité de représentant et pour le compte d'un gouvernement étranger, et les actes accomplis par le même représentant dans son intérêt personnel et privé ; que dans ce dernier cas, certains auteurs accordent une action en justice ; que d'autres auteurs, au contraire, la refusent absolument dans quelque cas et pour quelque cause que ce soit ; considérant que cette opinion est celle qui a prévalu, et que la jurisprudence n'a jamais varié sur ce point d'accord en ceci avec les principes du droit des gens : qu'ainsi il faut reconnaître que l'immunité complète de la juridiction en matière civile existe en faveur de toute personne investie d'un caractère officiel, comme représentant à un titre quelconque d'un gouvernement étranger ; que le Comte de Bruc est donc fondé à se retrancher derrière cette immunité." <sup>1</sup>

(2) In 1888 the Federal Court of Buenos Ayres, in an action concerning the goods of the *Paraguayan minister*, rejected the opinion expressed by certain writers that the immunity accorded to foreign representatives should be confined to cases where submission to the jurisdiction hindered the free exercise of their functions, and declared that the more generally accepted rule was that foreign representatives should not be subjected to the local jurisdiction unless they renounced privilege with the authorisation of their government. <sup>2</sup>

<sup>1</sup> Clunet (1884), 57 ; Hurst, *op. cit.*, ii. 182.

<sup>2</sup> Hurst, *op. cit.*, ii. 179.

(3) In 1915 the Court of Cassation at Rome, in the case of one *Rinaldi*, who had seized a motor car belonging to the Secretary of the Prussian legation to the Vatican, reversed the judgment of the lower courts, and held that private acts accomplished by a diplomatic agent are subject to the local jurisdiction ; further, the secretary was not head of the mission but a subordinate, and the act of seizure was in a courtyard and not in his abode.<sup>1</sup>

(4) In 1922 the Italian Court of Cassation, in the case of *Cominat v. Kite*, pronounced against the doctrine of absolute immunity, declaring that this was born of theories long rejected and contrary to justice and law ; it was inadmissible that a diplomatic agent should contract a debt, or conclude a contract, without means existing of making him pay, or obliging him to fulfil his engagements.<sup>2</sup>

Of these latter decisions M. Deák writes :

“Néanmoins, cette interprétation radicale de l'immunité de juridiction est unique dans la pratique des tribunaux, et semble être la conséquence d'une trop grande importance attachée au caractère territorial du droit.”<sup>3</sup>

It appears also that the judgment in the last mentioned case gave rise to a representation made by the doyen of the Diplomatic Corps at Rome to the Italian Ministry for Foreign Affairs.<sup>4</sup>

But by a subsequent judgment in 1927 the Court of Rome reversed the rule adopted by the Court of Cassation in these cases :

(5) In 1927, in the case *Lurie v. Steinmann*, before the Court of Rome, an action was brought against the ecclesiastical counsellor of the German Embassy accredited to the Holy See, in respect of a commission for having purchased certain property on his behalf, on the ground that Article 11 of the Law of Guarantees, on which the defendant relied, covered only acts of diplomatic agents executed in the exercise of their diplomatic functions, but not acts relating to their private affairs ; and that immunity protected only the head of the diplomatic mission. The Court held that it had no jurisdiction ; that it was obvious that when questions of immunities of diplomatic agents arise, such immunity could only refer to the persons of diplomatic agents with regard to their private affairs, since one could hardly speak of immunity in cases where they act as agents of states ; that the principle of immunity or extritoriality of diplomatic agents plainly implies the fact that diplomatic agents are to be considered outside the jurisdiction of the country in which they are officially recognised with regard also to their private affairs ; and that it is similarly recognised by

<sup>1</sup> Deák, *op. cit.*, 205.

<sup>2</sup> *Ibid.*, 205.

<sup>3</sup> *Ibid.*, 206.

<sup>4</sup> Genet, *Traité de Diplomatie, etc.*, i. 586 n.

international custom that the immunity comprises the whole of the official staff of the embassy or legation.<sup>1</sup>

§ 338. The view that real property privately owned by the diplomatic agent is subject to the local jurisdiction on the principle of the *lex loci rei sitae*, with the exception of the legation house if owned by him, does not escape criticism.<sup>2</sup>

In 1925, in the case *Montwid-Biallozor v. Ivaldi*, before the Supreme Court of Poland, regarding a contract of lease entered into by the military attaché to the Italian legation, it was held that municipal courts have jurisdiction in regard to the private immovable property of a public minister, except where it is devoted to the official use of the legation; and that though it is doubtful whether immunity from suits covers actions *in rem* relating to immovable property, it covers action *in personam*, and that actions arising out of a contract of lease are personal actions.<sup>3</sup>

§ 339. A diplomatic agent will do well to inform himself of all local legislation respecting diplomatic immunities. But as he ought carefully to avoid giving rise to any questions touching the extent of his immunities between his own government and that to which he is accredited, the obvious recommendation to make is that he should not acquire any kind of personal interest, or accept any obligations, likely to give rise to such questions. It will be better, for more reasons than one, to eschew all speculation and commercial transactions of whatever nature in the country where he is accredited, and to pay his local tradesmen's bills with regularity and despatch.

#### *Suite, etc.*

§ 340. The jurisdictional immunities of the diplomatic agent extend to the personnel of his mission, viz. the official suite, *i.e.* counsellors, secretaries and attachés, including naval, military, air and commercial attachés, appointed to assist him in his duties; those engaged in the office work of the mission, archivists, clerks, etc., and, in the East, dragomans and interpreters; doctor and chaplain where these are *bonâ fide* members of the mission. Also to the wives<sup>4</sup> and families of the above. And further to such persons as are in his employment for his personal convenience or that of his family—tutors, governesses, private secretaries, cooks, chauffeurs, gardeners, etc.

<sup>1</sup> *Annual Digest* (1927-8), Case No. 246.

<sup>2</sup> See on this point Hurst, *op. cit.*, ii. 180-4.

<sup>3</sup> *Annual Digest* (1925-6), Case No. 246.

<sup>4</sup> Even if living apart, according to French and English decisions: *Cottenet c. Rafalovitch*, Clunet (1908), 153; *Macnaghten v. Coverdias*, *Annual Practice, etc.* (1923), vol. i.; Hurst, *op. cit.*, ii. 158.

“ Il y a lieu de remarquer que les agents diplomatiques autres que les chefs de mission (les conseillers, secrétaires et attachés) sont considérés comme des ministres publics, jouissant des privilèges dans la même mesure que les envoyés eux-mêmes. Bien qu’il n’existe aucun document international exprimant cette opinion, des dispositions inscrites dans les législations nationales rangent ces agents dans la hiérarchie diplomatique. On verra par les exemples ci-après que les tribunaux partagent unanimement l’avis que les privilèges des agents diplomatiques existent quels que soient le grade ou le titre de ces agents.”<sup>1</sup>

“ La prérogative de ces agents s’étend à tous les fonctionnaires que les accompagnent et qui leur sont adjoints pour les assister et les suppléer, soit dans la mission générale qu’ils ont à remplir, soit dans les branches spéciales ressortissant à cette mission ; elle appartient à leurs secrétaires, à leurs attachés, au personnel de leur suite, à leur famille, à tous les gens, en un mot, dont la présence est nécessaire pour leur permettre de représenter dignement leur pays, et d’accomplir complètement et utilement leur mission.”<sup>2</sup>

The Pan-American Convention of February 20, 1928, signed at Havana, lays down for the signatory states the following rules : “ Article 14. Diplomatic officers shall be inviolate as to their persons, their residence, private or official, and their property. This inviolability covers : (a) all classes of diplomatic officers ; (b) the entire official personnel of the diplomatic mission ; (c) the members of the respective families living under the same roof ; (d) the papers, archives, and correspondence of the mission.”

§ 341. In most countries it is usual for the diplomatic agent to furnish to the ministry for foreign affairs a full list of the persons composing his mission for whom immunity is claimed. In Great Britain this is done annually at the commencement of each year, and the list is revised from time to time as changes are notified. By the Act 7 Anne, c. 12, every servant must be registered in the office of one of the Principal Secretaries of State, *i.e.* the Foreign Office.

In 1923, in the case *Assurance Compagnie Excelsior v. Smith*, at London, Mr. Smith, clerk in the United States embassy, whose name was recorded in the embassy list, was sued for calls on shares. He held a confidential position in the embassy, outgoing despatches were handed to him, he had charge of the embassy seal, and controlled the formal clerical work. It was held that, being on the official staff of the embassy, and carrying out official duties, he was entitled to the immunity claimed by him.<sup>3</sup>

<sup>1</sup> Deák, *op. cit.*, 198.

<sup>2</sup> *Aff. Dientz c. de la Jara* (Paris), Clunet (1878), 501 ; Hurst, *op. cit.*, ii. 153.

<sup>3</sup> 40 T. L. R. (1923), 105.

§ 342. As regards the method of claiming immunity in the event of an action arising before the local tribunals, practice may vary. The claim may be made direct to the tribunal, or the diplomatic agent may address himself to the government to which he is accredited, with the request that the necessary action may be taken. As is shown in the cases mentioned in § 334 (4), (5), in both France and Belgium the ministry of justice intervened to safeguard the immunity, and in Great Britain similar action has been taken.

1928. *Engelke v. Musmann*.—In this case the House of Lords gave judgment on appeal from an order of the Court of Appeal. An action having been brought against Herr Engelke in the King's Bench Division of the High Court for arrears of rent alleged to be due under the lease of a dwelling-house, he entered a conditional appearance, but claimed immunity on the ground that he had been consular secretary on the staff of the German embassy in London since 1920, had been notified as such to the Foreign Office, and that his name appeared in the diplomatic list issued by the Foreign Office. The plaintiff asked for leave to cross-examine the deponent on the facts asserted in his affidavit. This the court refused; the Judge in Chambers reversed this decision; the Court of Appeal concurred; and the matter was then carried to the House of Lords.

The questions were (1) whether a statement by the Attorney-General, at the instance of the Foreign Office, as to the status of a person claiming diplomatic privilege, was conclusive, and (2) whether the appellant should be ordered to be cross-examined in the courts on the affidavits in which his claim was preferred.

The contentions of the Attorney-General were submitted in a written case, and were to the effect that if a statement made on behalf of the Crown as to the position of a member of the diplomatic staff was not conclusive, and if the court by seeking to investigate the facts, compelled the person for whom immunity was claimed to submit to legal process, it would be impossible for the Crown to fulfil the obligations imposed by international law and the comity of nations, since the steps taken would themselves involve a breach of diplomatic immunity.

*Held*: that the statement of the Attorney-General, made at the instance of the Foreign Office, as to the status of a person claiming diplomatic privilege, was conclusive.<sup>1</sup> *Per* Viscount Dunedin: Apart from that statement the cross-examination of the defendant would have been justified.

In the United States various instances show that a certificate from the Secretary of State is accepted by the courts as sufficing to establish the diplomatic status of the person concerned.

<sup>1</sup> L. R. [1928] A. C. 433; Hurst, *British Year Book of International Law* (1929), 11.

§ 343. Inasmuch as a diplomatic agent is the representative of the state which has accredited him, it is through the government of that state that an aggrieved person can in the last resort obtain satisfaction. If the matter is a civil one, and a direct request for a settlement proves inefficacious—or, in the case of a member of the staff, a representation to the head of the mission—the aggrieved person may lay the facts before his own government, with a view to all proper measures being taken to obtain redress, a course which is often successful<sup>1</sup>; or he may carry the matter to the tribunals of the country which has accredited the agent.

“Quoique le centre des affaires de l’ambassadeur se trouve à l’endroit de sa mission, dans l’État qui reçoit, il n’y acquiert pas un domicile légal. Toutes les prétentions civiles qui naissent pendant l’exercice de ses fonctions, et celles qui se sont produites avant, sont justiciable des tribunaux de l’État qui envoie.”<sup>2</sup>

In the case of a Belgian diplomatic agent who endorsed letters of exchange to the profit of an Austrian creditor, and payable in Austria, the Cour d’Appel at Brussels held that he could only be sued in Belgium, unless he had accepted the jurisdiction of the foreign tribunal, and declared that the Belgian law of prescription applied.<sup>3</sup> In Roumania, the High Court of Cassation and Justice held that the Roumanian commercial attaché in Italy could be proceeded against in Roumania for *trafic d’influence* when the latter was punishable both by Roumanian and Italian law.<sup>4</sup> (See also the case of *Dickenson v. Del Solar* in the English courts, § 347 (6).)

§ 344. In a criminal matter the recall of the offender would doubtless be demanded by the state offended.

In 1881 the German ambassador at London claimed privilege in respect of a secretary of the embassy accused of a criminal offence. Assurances were given that he would not be retained in the service of the embassy, and no further proceedings were taken in England.

In 1915 the United States Government notified the German ambassador at Washington that the continued presence of *Captains Boy-Ed and Von Papen*, German naval and military attachés, would no longer serve the purpose of their mission, and would be unacceptable, owing to their connection with the illegal acts of certain persons within the United States. They were recalled, and returned to Germany under safe-conducts granted by the Allied Powers at the request of the United States Government.<sup>5</sup>

<sup>1</sup> See Hurst, *op. cit.*, ii. 209.

<sup>2</sup> Heyking, *op. cit.*, 272.

<sup>3</sup> Hill, *American Journal of International Law* (1931), 255.

<sup>4</sup> Hill, *op. cit.*, 255.

<sup>5</sup> *Diplomatic Correspondence between the United States and Belligerent Govts.*, x. 363.

In 1916 *Von Igel*, former secretary of Von Papen (see above), was arrested in New York, and his papers seized and copies taken. They were said to contain evidence of complicity in conspiracies against the neutrality of the United States ; and it is said that Von Papen and Von Igel directed and financed an office for procuring fraudulent passports for German reservists. The German ambassador protested, claiming Von Igel as an attaché, and his papers as embassy papers ; the United States Government replied that the acts complained of were prior to his connection with the embassy, and asked the ambassador to identify which papers belonged to the embassy, but he declined. (The action taken in this case appears to have met with criticism in the United States.)<sup>1</sup>

§ 345. In the case of servants it is essential that they should be actually and *bonâ fide* employed, and in Great Britain they have no immunity if engaged in trade. Often they may be nationals of the state in which the diplomatic agent resides, and in some countries distinctions are drawn—in Germany German nationals so employed are subject to the local jurisdiction ; in the United States, no citizen or inhabitant of that country has immunity in respect of debts contracted before entering such service. But the immunity of servants, being purely derivative, lapses with the termination of their employment,<sup>2</sup> and it would be appropriate, should they come into conflict with the local law, either that privilege should be waived, or that they should be dismissed, in order that justice may be done. As Hall says,<sup>3</sup> “No minister wishes to shield a criminal, and there is no reason to believe that permission to exercise jurisdiction is refused upon sufficient cause being shown.”

The Pan-American Convention of February 20, 1928, concerning diplomatic officers, makes no mention of servants.

§ 346. Abuses such as existed in the past, as mentioned in the following extract from a letter written in 1818 by the United States Attorney-General, are of course highly improbable at the present day :

“English books abound with instances of attempts on the part of foreign ministers to screen debtors from their creditors by the abuse of this privilege, and some of these cases are marked with an audacity only equalled by their absurdity. Thus in one case an attempt was made to protect a debtor on the ground of his being ostler to a foreign minister, who it was proven never kept horses ; in another, on the ground of the defendant’s being coachman to a

<sup>1</sup> Hershey, *Diplomatic Agents*, etc., 149.

<sup>2</sup> See, e.g., decision of Supreme Court, Berlin (1899) ; Clunet (1902), 146.

<sup>3</sup> Hall, 230.

foreign minister who kept no coach ; in a third, of his being cook to one who kept no kitchen nor culinary instruments ; in a fourth, of his being gardener to one who had no garden ; in a fifth, of his being a physician, although there was no proof that he had ever prescribed in his life ; and in a sixth, on the ground of his being English chaplain to the ambassador from Morocco, who was a Mohammedan.”<sup>1</sup>

In 1823, in the case *Novello v. Toogood*, in the English courts, the plaintiff, a British subject, was first chorister in the chapel of the Portuguese ambassador at London, and had also other occupations—prompter at a theatre, teacher of music and languages. He rented a house, letting part in lodgings, and was subjected by a rate-collector, the defendant Toogood, to a distress for rates. In an action brought by the plaintiff for trespass, a verdict was found for him, subject to the opinion of the Court of King’s Bench.

Abbott, C.J., in giving judgment against the plaintiff, said that his opinion was “founded upon one point only, that the action is for taking the plaintiff’s goods and not for arresting his person ; as to which I give no opinion. . . . I am of the opinion that whatever is necessary to the convenience of an ambassador, as connected with his rank, his duties and his religion, ought to be protected ; but an exemption from the burthens borne by other British subjects ought not to be granted in a case to which the reason of the exemption does not apply.”<sup>2</sup>

### *Renunciation of Privilege*

§ 347. The right of a diplomatic agent to waive privilege and submit to the local jurisdiction is recognised and supported by various instances. Such renunciation, where given, should be expressed in regular and definite form.<sup>3</sup> It may be a question whether the consent of his government should not also be shown. The instructions to United States diplomatic officers are that immunity from criminal and civil process cannot be waived except by the consent of the government ; but doubtless in most cases a diplomatic agent waiving privilege would only do so on obtaining the consent of his government.

(1) In 1906, *M. C. Waddington*, son of the Chilean chargé d’affaires at Brussels, being accused of murder, took refuge in the legation, which was surrounded by police. Later, the chargé d’affaires informed the Public Prosecutor that he renounced immunity from the jurisdiction for his son. The Belgian authorities, however, decided that the consent of the Chilean Government must be awaited, and this having been given, the accused was

<sup>1</sup> Moore, iv. 655.

<sup>2</sup> 1 B. & C. 554.

<sup>3</sup> Hurst, *op. cit.*, ii. 194.

brought before the Cour d'Assises of Brabant, where, after trial, he was acquitted.<sup>1</sup>

(2) 1917. Case of *Suarez v. Suarez*. The Bolivian Minister in London, in an action brought against him in 1914, concerning the estate of Francisco Suarez, deceased, of which he was administrator, waived his privilege and submitted to the jurisdiction, but failed to comply with an order of the court to pay a certain sum of money into court, and the question arose whether, notwithstanding such submission, any writ of execution could be sued out or issued, whereby his goods, etc., could be seized. It was held by Eve, J., that a minister accredited to Great Britain by a foreign state, who has submitted to the jurisdiction, and against whom judgment has been pronounced, is nevertheless under the Act of 1708 entitled, when leave to issue execution is applied for, to assert and obtain immunity from process by way of execution.<sup>2</sup>

A few months later the Bolivian Government terminated the defendant's appointment as minister in London, and the plaintiff's application for leave to proceed to execution and for liberty to issue a writ of sequestration of the defendant's property was restored to the list. Eve, J., granted the plaintiff's application, and held further that, as the defendant had departed secretly from the country knowing that an order for payment had been made against him, the sequestration could issue against him, notwithstanding that service of the order requiring payment had not actually been made upon him. This decision was affirmed by the Court of Appeal.<sup>3</sup>

(3) In 1925, in the case *Drtilek v. Barbier*, before the Cour d'Appel at Paris, the chancellor of the Czechoslovak legation claimed immunity from distraint. Having rented a flat, he was two years later given notice to quit; relying on French legislation concerning rents, he thereupon applied to the courts for reduction of rent, and then declined to pay more than the reduced amount which he alleged to be due as the result of this legislation. It was held by the court that even had his name appeared in the official diplomatic list (which it did not) he had waived immunity from jurisdiction by invoking against his landlord the benefit of French legislation as to rents; he could not thereafter shelter himself against his landlord behind diplomatic privilege.<sup>4</sup>

(4) In 1925, in the case *Montwid-Biallozor v. Ivaldi*, before the Supreme Court of Poland, concerning a contract of lease of a flat entered into by the military attaché of the Italian legation, which provided that "the diplomatic clause shall not be invoked," the court held that the courts below should have considered, and that the Supreme Court must begin with considering, the question of extritoriality, which is a question of public law. The immunity of diplomatic agents from the civil jurisdiction of the receiving state being a recognised principle of international law, flowing

<sup>1</sup> *Revue Générale du Droit International Public*, xiv. 159.

<sup>2</sup> L. R. [1917] 2 Ch. 131.

<sup>3</sup> L. R. [1918] 1 Ch. 176.

<sup>4</sup> *Clunet* (1926), 638; *Annual Digest* (1925-6), Case No. 242.

from the idea of sovereignty and the necessities of international intercourse, the privilege accorded by it was not a personal privilege of the diplomatic agent, but of the state itself, and that it could not therefore be waived in a private contract at the discretion of the diplomatic agent and without the approval of his government.<sup>1</sup>

(5) In 1927, in the case *Herman v. Apetz*, before the Supreme Court of New York, the wife of the Costa Rican secretary of legation entered appearance, but afterwards pleaded immunity from process. The Court observed that there was no doubt that an envoy might not waive his diplomatic immunity without consent of the sending state ; whether this inability to waive also applied to his wife, family and domestic servants, was a matter of conflict among text writers ; the better view seemed to be that waiver on the part of such persons did not require the consent of the home state and was therefore effective.<sup>2</sup>

(6) 1930. *Dickenson v. Del Solar-Mobile and General Insurance Co., Ltd.*, third parties.

This was an action in the King's Bench Division of the High Court of Justice against the First Secretary of the Peruvian legation in London for damages for personal injuries alleged to have been caused by his negligent driving of a motor-car. The defendant was forbidden by the Peruvian minister to claim diplomatic immunity, and an unconditional appearance was entered on his behalf. But, being insured against third party claims, he had called upon the company to indemnify him in respect of the plaintiff's claim and his own costs.

A verdict for damages having been given, the insurance company disputed their liability to indemnify him, alleging that as he possessed diplomatic privilege, there was no legal liability to the plaintiff, and so no claim under the policy ; also that by refusing to claim diplomatic privilege he had acted in breach of the conditions of the policy.

*Held* : that a person covered by diplomatic immunity is not immune from legal liability, but only from proceedings in the local jurisdiction (unless he submits thereto) so long as he possesses diplomatic status. The defendant was therefore under a legal liability to the plaintiff, and there was a claim arising under the policy ;

The privilege of immunity attaching to a person having diplomatic status is the privilege not of himself, but of the sovereign by whom he is accredited, and the right of waiver of such privilege belongs to such sovereign. The claiming and waiver of the privilege was not a matter within the volition of the defendant, who, being forbidden by his official superior to claim immunity, could not do so, and so his failure to do so could not be said to be a breach of the conditions of the policy ;

The entry of an unconditional appearance to the proceedings,

<sup>1</sup> *Annual Digest* (1925-6), Case No. 245.

<sup>2</sup> 130 *Misc. (N.Y.)*, 618 ; *Annual Digest* (1927-8), Case No. 244.

which had been done on the defendant's behalf by the solicitor of the third parties, was itself a waiver of the privilege and a submission to the jurisdiction, and privilege could not therefore be pleaded thereafter by way of defence, and the action must proceed to judgment.

The court refrained from deciding whether, after a submission to the jurisdiction, diplomatic immunity could be asserted as a bar to the execution of the judgment, since, even if it were so, execution might issue as soon as the defendant ceased to be a privileged person, and the judgment might be the foundation of proceedings against him at any time in Peru.<sup>1</sup>

### *Proceedings by a Diplomatic Agent*

§ 348. If, on the other hand, the diplomatic agent himself chooses to bring an action before the local tribunals, he obliges himself, like a sovereign in similar circumstances, to comply with the rules of the court. He is liable therefore to defences by way of counterclaim to the action (*i.e.* relating to the same matter),<sup>2</sup> and to condemnation in costs (concerning which security may perhaps be required) if the suit fails. If the suit succeeds, and the defendant prosecutes an appeal, which is also a mode of defence, the diplomatic agent cannot decline the jurisdiction of the superior court.

In 1925 a *secretary of the Chinese embassy* at Berlin, having bought a motor car and paid part of the price, brought an action to claim possession, offering to pay the balance ; and a provisional order was issued decreeing delivery of the car. The defendant, who claimed that the contract had lapsed, owing to delay in payment, brought a cross-suit, claiming restitution of the car ; and this was decreed, the provisional order being revoked. The plaintiff appealed, objecting to the counter-claim on the ground of extritoriality, and the appeal was allowed.

An appeal to the Reichsgericht followed, and it was held that as the plaintiff was wrongly in possession, and merely availing himself of his extritoriality to render perpetual the provisional decree, thus depriving the defendant of his legal remedies incidental to the plaintiff's suit, the plea of extritoriality could not be recognised. Whether a diplomatic agent by bringing an action

<sup>1</sup> L. R. [1930] 1 K. B. 376 ; *British Year Book of International Law* (1930), 231.

<sup>2</sup> See Dicey, *Conflict of Laws* (4th Ed.), 214 : " A sovereign or ambassador who brings an action in the High Court undoubtedly submits himself to its jurisdiction in regard to that action, but no further. This principle decides the extent to which the court has jurisdiction to entertain a counterclaim against, *e.g.*, an ambassador who is plaintiff in an action. If the counterclaim is really a defence to the action, *i.e.* is a set-off, or something in the nature of a set-off, the court has a right to entertain it. If the counterclaim is really a cross-action, the court has no jurisdiction to entertain it." See also Hurst, *op. cit.*, ii. 190.

impliedly accepts the jurisdiction of the court in a cross-suit arising out of that action depends upon the merits of each particular case.<sup>1</sup>

*Evidence of a Diplomatic Agent*

§ 349. A diplomatic agent cannot be required to attend in court to give evidence of facts within his knowledge, nor can a member of his family or suite be so compelled. Sometimes his evidence has been taken down in writing by a secretary of the mission, or by an official whom the diplomatic agent may have consented to receive for the purpose, and the evidence has been communicated to the court in that form. But in some countries evidence, particularly in a criminal case, may have to be taken orally and in presence of the accused.

In 1856 the Netherlands minister at Washington was requested by the Secretary of State to appear in court, to give evidence regarding a homicide committed in his presence. By the unanimous advice of his colleagues he refused. Representations were made to the Netherlands Government by that of the United States, which, while admitting that in virtue of international usage and of the law of the United States, the minister had the right of refusal, appealed to the general sense of justice of the Netherlands Government. The latter, however, declined to give the desired instructions, but authorised the minister to give his evidence in writing, and he accordingly offered to do so, adding that he could not submit to cross-examination. The offer was declined, as the district Attorney-General reported that such a written statement would not be receivable as evidence.<sup>2</sup>

In 1881, at the trial of Guiteau in the United States for the assassination of President Garfield, the Venezuelan minister was called as a witness for the prosecution, and was authorised by his government to waive his rights and appear as a witness.<sup>3</sup>

The instructions to United States diplomatic representatives are that they cannot be compelled to testify in the country of their sojourn before any tribunal whatsoever; the right being regarded as appertaining to their office, and not to their person, and one of which they cannot divest themselves except by consent of their government.

§ 350. Writers express different views on this subject. Hall<sup>4</sup> considers that where by the laws of the country evidence must be given orally before the court, and in the presence of the accused, it is proper for the minister, or the member of the mission whose evidence is needed, to submit himself for

<sup>1</sup> *Annual Digest* (1925-6), Case No. 243.

<sup>2</sup> Calvo, *Le Droit international, etc.*, § 1520 n.

<sup>3</sup> Moore, iv. 644-5.

<sup>4</sup> Hall, 235.

examination in the usual manner ; Calvo, that the principles of the law of nations did not allow him to refuse to appear in court and give evidence in the presence of the accused where the laws of the country absolutely require this to be done ; Oppenheim,<sup>1</sup> that no envoy can be obliged, or even requested, to appear as a witness in a civil, or criminal, or administrative court, or to give evidence before a commissioner sent to his house ; and Ullmann,<sup>2</sup> that the envoy may, if he is so disposed, authorise the appearance of a member of his suite or of his household. The Spanish code formerly contained provisions to the effect that local magistrates might compel the evidence of foreign diplomats ; the entire diplomatic body protested with success to the Spanish Government against these provisions.<sup>3</sup>

The Pan-American Convention of February 20, 1928, concerning diplomatic officers, lays down for signatory states the following rule : " Article 21. Persons enjoying immunity from jurisdiction may refuse to appear as witnesses before the territorial courts."

A decree of the Soviet Union of January 14, 1927, declares that diplomatic representatives and the members of their missions are not obliged to give evidence in court, and in the event of an agreement to give such evidence they are not obliged to appear in court for that purpose.

### *Inquests*

§ 351. In the event of members of the diplomatic corps dying in England, whether within or without the legation, in circumstances which would normally necessitate the holding of a coroner's inquest, it appears to have been the practice, where immunity has been claimed, to waive the proceedings, or, where consent has been given subject to reservations, to comply with the latter.

§ 352. On the suicide of the butler of the British embassy at Madrid in 1921, the ambassador waved extraterritorial rights to the extent of receiving the examining magistrate of the district at the embassy, the evidence given by him and some of the servants being embodied in a procès-verbal, which stated that he had waived those rights for the occasion.

### *Independence*

§ 353. A topic upon which writers, more especially those of earlier times, have dwelt largely is that of the independence of the diplomatic agent.

<sup>1</sup> Oppenheim, i. § 392.

<sup>2</sup> Ullmann, 188 n. i.

<sup>3</sup> *Foreign Relations of the United States* (1877), 492 ; Deák, *op. cit.*, 206.

We have seen that international law regards the inviolability of the head of a mission as the chief attribute of the diplomatic character ; absolute independence is, in principle, its corollary, as being in itself the consequence of the independence of the nation of which the public minister is the mandatory.<sup>1</sup>

And from this it is deduced that the diplomatic agent should abstain from any act likely in any way to prejudice that independence.

“ Il importe qu’il n’ait rien à espérer, ni rien à craindre du souverain auquel il est envoyé.”<sup>2</sup>

§ 354. A diplomatic agent should be careful to abstain from all interference in the domestic affairs of the state to which he is accredited. Instances in which such interference has led to requests for his recall, or to his dismissal by the state concerned, are set out in Chapter XXI.

In 1925 *M. Volhine*, secretary to the Soviet embassy at Paris, was relieved of his functions in consequence of representations made by the French Government regarding a speech made by him at a public meeting in France to commemorate Sun Yat-Sen.<sup>3</sup>

The Pan-American Convention of February 20, 1928, signed at Havana, lays down for the signatory states the following rule : “ Article 12. Foreign diplomatic officers may not participate in the domestic or foreign politics of the state in which they exercise their functions.”

§ 355. On June 15, 1931, in the House of Commons, London, questions were asked of the Prime Minister regarding certain addresses given by members of the Soviet embassy and the Finnish legation within the precincts of the House, and it was suggested in reply that Members might consider whether in using the committee rooms for addresses by members of the diplomatic body upon controversial questions they were not adopting a practice open to grave objection. In reply to further questions by Sir A. Chamberlain whether such addresses by foreign diplomats were not contrary to diplomatic usage, whether the interference of diplomats in the internal affairs of other countries had not led to their being handed their passports, and whether it was not right that members of embassies and legations should refrain in future from delivering addresses of that kind, the Prime Minister said that that was the character and nature of the statement he had made, and that he hoped its complete significance would not be lost.<sup>4</sup>

#### *Attacks in the Local Press*

§ 356. As regards such attacks directed against diplomatic agents in countries to which they are accredited, in cases

<sup>1</sup> de Martens-Geffken, i. 88.

<sup>2</sup> Vattel, *Droit des Gens*, iv., c. 7, § 92.

<sup>3</sup> *Times*, May 12, 1925.

<sup>4</sup> Parliamentary Debates, June 15, 1931.

where the publications are under the control of the government it is the duty of the latter to prevent this. In 1856 the Peruvian Government dismissed the editor of a journal under their control which had published an article offensive to the resident diplomatic body, and caused their disapproval of his action to be published. The codes of many European countries punish with severity such offences defamatory to the reputation of diplomatic agents.<sup>1</sup> But where, as is often the case, the Press is free from government control, and if the articles do not transcend the limits fixed by law, the government can usually only act indirectly in the matter.<sup>2</sup> During the war of 1914-18 the Swiss Government found it necessary to prohibit by decree propaganda directed against the German minister and military attaché.

*Jurisdiction over Members of Suite*

§ 357. On this point Oppenheim says :

“ As the members of an envoy's retinue are considered extritorial, the receiving state has no jurisdiction over them, and the home state may therefore delegate civil and criminal jurisdiction to the envoy. But no receiving state is required to grant self-jurisdiction to an ambassador beyond a certain reasonable limit. Thus, an envoy must have jurisdiction over his retinue in matters of discipline, he must be able to order the arrest of a member of his retinue who has committed a crime and is to be sent home for his trial, and the like. But no civilised state would nowadays allow an envoy himself to try a member of his retinue, though in former centuries this used to happen.”<sup>3</sup>

§ 358. Recently Baron Heyking observes :

“ L'ambassadeur est le chef de tout le personnel de l'ambassade et possède en cette qualité une juridiction disciplinaire. Mais a-t-il encore d'autres droits judiciaires ? Grotius était de l'opinion que l'État qui reçoit avait à décider sur l'admissibilité de la juridiction personnelle des ambassadeurs. Par contre Bynkershoek soutenait que l'État qui envoie avait seul le pouvoir d'accorder ce droit. Une combinaison des deux opinions donne le vrai principe ; la juridiction personnelle exige un double titre légal et ne peut se produire que lorsque l'État qui envoie et celui qui reçoit consentent des deux côtés. Elle se borne aujourd'hui, dans la plupart des États européens, à la juridiction volontaire en matière civile et à ce qu'on appelle 'premier procédé' (erster Angriff) en matière criminelle. C'est-à-dire que l'on procède après l'arrestation à la constatation des faits et le délinquant est renvoyé ensuite dans sa

<sup>1</sup> Deák, *op. cit.*, 538.

<sup>2</sup> Hurst, *op. cit.*, ii. 132.

<sup>3</sup> Oppenheim, i. § 396.

patrie, où il est l'objet d'une instruction formelle. L'ambassadeur est, à cette occasion, en droit de requérir les autorités et les tribunaux locaux. Pour les délits ou contraventions de police, l'ambassadeur ne doit jamais dépasser la mesure d'une punition correctionnelle.”<sup>1</sup>

§ 359. But in times gone by diplomatic agents claimed a more extensive jurisdiction over the members of their suites.

According to early writers, a distinction was to be drawn between (1) an offence against his own country, or a fellow subject, committed within the embassy, in which case the agent claimed the right to send home the accused in fetters to the courts of his own country for punishment; and (2) an offence committed outside the embassy against a subject of the state, or against public order, in which case, in order to avoid disputes, the envoy either dismissed the offender from his service, or handed him over to the local authorities on their requisition. But the latter did not apply to members of the diplomatic personnel, whom he had no power to dismiss, and he had either to arrange for their dismissal with his own government, with a view to the surrender of the culprit to the authorities, or for an order to send him home for punishment.<sup>2</sup>

A famous case is that of the Duc de Sully, who in 1603 was sent on a special mission from France to James I. Combault, a member of his mission, having killed an Englishman, Sully sent a message to the Mayor of London, saying that he had condemned the offender to be decapitated, and asking for the services of an executioner on the following morning. The Mayor having counselled moderation, Sully replied that he saw no way of satisfying his own people and the Mayor, but to ask the latter to take charge of the prisoner, and to inflict on him whatever penalty the law of England might prescribe. Combault was accordingly handed over, but was pardoned by James I at the solicitation of the French ambassador-in-ordinary.<sup>3</sup>

### *Civil Jurisdiction*

§ 360. Oppenheim says :

“Negotiation, observation and protection are tasks common to all diplomatic envoys of every state. But a state may order its permanent envoys to perform other tasks, such as the registration of deaths, births, and marriages of subjects of the home state, legalisation of their signatures, issue of passports for them, and the like. But, in doing this, a state must be careful not to order its envoys to perform tasks which are by the law of the receiving state exclusively reserved to its own officials. Thus, for instance, a state whose laws compel persons who intend marriage to conclude

<sup>1</sup> Heyking, *op. cit.*, ii. 268.

<sup>2</sup> Schmelzing, ii. 241; Schmalz, *Europäisches Völkerrecht*, 118.

<sup>3</sup> Michaud and Poujoulat, *Nouvelle Collection de Mémoires, etc.*, ii. 444.

it in the presence of its registrars, need not allow a foreign envoy to legalise a marriage of compatriots before its registration by the official registrar. So, too, a state need not allow a foreign envoy to perform an act which is reserved for its jurisdiction, as, for instance, the examination of witnesses on oath.”<sup>1</sup>

At the present day, however, most of these matters fall within the province of consular officers, who are often empowered, under rules issued for their guidance, to perform notarial and other acts in respect of their compatriots, within the limits allowable by the laws of the state wherein they reside.

§ 361. As regards marriages at foreign embassies and legations, where such are possible, these, even if valid under the law of the state which the ambassador or minister represents, are not necessarily so in the law of the state in which they are celebrated, and in many instances it is known they are not.

§ 362. While statements are to be found in text-books of repute that marriages at foreign embassies and legations in England would be valid in English law, no decided case appears to be mentioned in which this has been laid down by a court of law, and in the circumstances it would be difficult to say definitely that any such marriages are valid in English law. In the case of such marriages between persons who are not both nationals of the country in whose embassy or legation the marriage was celebrated, the best opinion appears to be that they are invalid in English law.

### *Domicile and Nationality*

§ 363. Diplomatic agents<sup>2</sup> and their staffs maintain their domicile in their own country, and children born to them in the country where they are temporarily residing in the performance of their official duties have as a general rule the nationality of their parents, and are not claimed as nationals by the latter country. In English law the children born in Great Britain of members of foreign missions having diplomatic immunity are not deemed to be British subjects, though their births should be registered in order to comply with the local law; while children born abroad of British subjects who are members of British diplomatic missions are deemed to be British subjects under statute law, or, in certain cases, the common law.

<sup>1</sup> Oppenheim, i. § 382.

<sup>2</sup> Hall, 236.

*Extensions*

§ 364. While the foregoing paragraphs of this chapter relate to permanent missions accredited to foreign countries, missions of a temporary character are sometimes sent, as, for instance, when a special agent is accredited to represent his sovereign or country at a coronation or other royal ceremony, to invest a sovereign with a high decoration, or on the occasion of some important national celebration. Such representatives also enjoy diplomatic immunities and privileges both as regards themselves and their suites. (See §§ 78-9.)

§ 365. As regards delegates to the numerous conferences now held on a great variety of matters, some doubt might perhaps be felt, in the absence of cases arising for settlement, as to the extent of the immunities to which they and the members of their suites are entitled. Formerly international congresses and conferences were for the most part attended by personages of high ministerial rank, or by resident diplomatic agents who already possessed diplomatic privilege; now the plenipotentiaries appointed are often officials or persons chosen for their special knowledge of the subject to be discussed, who with their retinues constitute the delegations to the conference. In the view of most writers such representatives are entitled to full diplomatic privilege.

“Ces personnes n’occupant pas un rang déterminé dans la hiérarchie diplomatique, leur qualité se trouve essentiellement attachée à la nature de leur mission, qui est de représenter les intérêts d’un État non point auprès d’un État étranger, mais auprès de tous les États participant au congrès. Or, la doctrine moderne admet que la qualité diplomatique est attachée à la fonction et à la nature de la mission plus qu’au titre. Elle reconnaît l’utilité des distinctions de classes et de rangs, mais se refuse à les considérer comme substantielles, toutes les personnes qui représentent régulièrement leur souverain ou leur pays ayant également un caractère officiel qui leur assure des prérogatives et immunités analogues. Il semble donc que l’on ne soit pas fondé à refuser aux délégués aux congrès et conférences la qualité de ministres publics. . . .”<sup>1</sup>

“Among the envoys political, again, two kinds are to be distinguished—namely, (1) such as are permanently or temporarily accredited to a state for the purpose of negotiating with such state, and (2) such as are sent to represent the sending state at a congress or conference. The latter are not, or need not be, accredited to the state on whose territory the congress or conference takes

<sup>1</sup> Secretan, *Les Immunités Diplomatiques des Représentants des États Membres et des Agents de la Société des Nations*, 8.

place, but they are nevertheless diplomatic envoys, and enjoy all the privileges of such envoys as regards extraterritoriality and the like which concern the inviolability and safety of their persons and the members of their suites."<sup>1</sup>

"The case of negotiators at a congress or conference is exceptional. Though they are not accredited to the government of the state in which it is held, they are entitled to complete diplomatic privileges, they being as a matter of fact representatives of their state and engaged in the exercise of diplomatic functions."<sup>2</sup>

"At a Peace congress or conference, or at such an assembly for any other purpose, each Power represented may appoint as many plenipotentiaries as it may consider convenient to itself, who may be assisted by technical delegates, naval, military, economic and legal, and by secretaries. The members of the delegation will enjoy all the ordinary privileges and immunities usually accorded to diplomats."<sup>3</sup>

The Pan-American Convention of February 20, 1928, signed at Havana, concerning diplomatic officers, contains the following articles :

Art. 1.—States have the right of being represented before each other through diplomatic officers.

Art. 2.—Diplomatic officers are classed as ordinary and extraordinary. Those who permanently represent the government of one state before that of another are ordinary. Those entrusted with a special mission or those who are accredited to represent the government in international conferences and congresses or other international bodies are extraordinary.

Art. 3.—Except as concerns precedence and etiquette, diplomatic officers, whatever their category, have the same rights, prerogatives and immunities. Etiquette depends upon diplomatic usages in general as well as upon the laws and regulations of the country to which the officers are accredited.

Art. 4.—In addition to the functions indicated in their credentials, ordinary officers possess the attributes which the laws and decrees of the respective countries may confer upon them. They should exercise their attributes without coming into conflict with the laws of the country to which they are accredited."

"Art. 9.—Extraordinary diplomatic officers enjoy the same prerogatives and immunities as ordinary ones."

§ 366. Within recent times diplomatic privileges and immunities have been extended by treaty provisions to certain officials and persons. Under Article 24 and Article 46 of the Hague Conventions for the Pacific Settlement of International Disputes, of 1899 and 1907 respectively, the members of arbitration tribunals constituted thereunder enjoy such

<sup>1</sup> Oppenheim, i. § 363.

<sup>2</sup> Hall, 365.

<sup>3</sup> Satow, *International Congresses*, 13.

privileges and immunities. Under Article 7 of the Covenant of the League of Nations representatives of the members of the League and officials of the League when engaged on the business of the League enjoy them. (See § 830.) Under Article 19 of the Statute of the Permanent Court of International Justice the members of that court, when engaged on the business of the court, are guaranteed similar rights. (See § 837.) The international commissions set up in the case of certain European rivers also enjoy them. And the reparation articles of the treaties of peace provided for such rights being enjoyed by members of the reparation commissions set up thereunder.

§ 367. In a recent article on "Diplomatic Immunities, Modern Developments,"<sup>1</sup> Sir C. Hurst, in commenting on such extensions, refers to the cases mentioned above in §§ 334 (4), (5) and 342, where the French, Belgian and British Governments successively intervened to safeguard the diplomatic privilege of the persons concerned, and observes :

"Developments are taking place as regards the tasks imposed upon diplomatic missions, and as regards the categories of persons engaged upon international work, who should be free from subjection to the local jurisdiction. The final decision rests with the executive government, not with the courts, as to what individuals are entitled to the privilege, and this enables the adjustments in the application of the fundamental principles, which are necessary for meeting the new developments, to be made satisfactorily."<sup>2</sup>

§ 368. A recent case in the German courts may, however, be mentioned :

In 1926, in a case before the Oberlandesgericht at Darmstadt, concerning a person whom the German Foreign Office refused to recognise as a member of a foreign legation entitled to diplomatic privilege, the court held that according to German constitutional and administrative law, German courts are only in certain specific cases bound by the opinions of government authorities ; the declaration of the Foreign Office on a question of extraterritoriality does not formally bind the courts, and the Foreign Office has itself expressed the opinion that a declaration made by it was not binding on a German court.<sup>3</sup>

§ 369. But persons charged with particular functions of one kind or another, and not forming part of the personnel of a diplomatic mission, such as representatives at exhibitions, or

<sup>1</sup> *British Year Book of International Law* (1929), 1.

<sup>2</sup> *Ibid.*, 13.

<sup>3</sup> *Annual Digest* (1925-6), Case No. 244.

who may be deputed to facilitate the application of tariffs in matters of trade, and in general non-official persons, cannot claim immunity as of right.<sup>1</sup> Such special facilities as may be accorded to them rest rather on a basis of courtesy, and this seems also the case where commissioners are appointed for the regulation of particular matters requiring adjustment which are outside the scope of the ordinary duties of the diplomatic representative. Of these Hall says <sup>2</sup> :

“ Commissioners for special objects are not considered so to represent their government, or to be employed in such functions, as to acquire diplomatic immunities. They are, however, held to have a right to special protection, and courtesy may sometimes demand something more. It would probably not be incorrect to say that no very distinct practice has been formed as to their treatment, contentious cases not having sufficiently arisen.”

§ 370. Under the former Trade Agreement of March 16, 1921, between Great Britain and the Russian Soviet Republic, immunity from search and arrest was provided for in the case of the official agents appointed thereunder, but not immunity from civil process. In the civil action *Fenton Textile Association v. Krassin and Others* (1921), it was held by the Court of Appeal in London that as the defendant had not been recognised by any competent authority in England in any other capacity than that of official agent under the Trade Agreement, his status was insufficient to carry with it the immunity accorded to accredited and recognised representatives of foreign states. In the course of his judgment Lord Justice Scrutton observed :

“ The question of the exact limits of diplomatic privilege is so important as to justify me in declining to lay down any general principle unless the facts of the case require it. It is sufficient to say that so long as our government negotiates with a person as representing a recognised foreign state about matters of concern as between nation and nation, without further definition of his position, I am inclined to think that such representative may be entitled to immunity though not accredited or received by the King. If the question in the present case had been the position of M. Krassin when he was as representing the Russian Soviet Government negotiating the Trade Agreement with His Majesty's Government, I should have been inclined to think that the view expressed by Lord Curzon in his letter of July 26, 1920, that M. Krassin should be exempted from the process of the court was correct. But as such representative he negotiated a Trade Agreement which authorised the appointment of official trade agents in this country by the Russian Govern-

<sup>1</sup> Hurst, *op. cit.*, ii. 155.

<sup>2</sup> Hall, 371.

ment who should have certain specified and carefully defined privileges and immunities. These privileges and immunities do not include immunity from civil process.”<sup>1</sup>

§ 371. The temporary Commercial Agreement between Great Britain and the Soviet Union, signed at London, April 16, 1930,<sup>2</sup> contains the following provisions :

“ Art. 2.—(1) In view of the fact that, by virtue of the laws of the Union of Soviet Socialist Republics, the foreign trade of the Union is a state monopoly, His Majesty’s Government in the United Kingdom agree to accord to the Government of the Union of Soviet Socialist Republics the right to establish in London a Trade Delegation, consisting of the Trade Representative of the Union of Soviet Socialist Republics and his two deputies, forming part of the Embassy of the Union of Soviet Socialist Republics.

(2) The head of the Trade Delegation shall be the Trade Representative of the Union of Soviet Socialist Republics in the United Kingdom. He and his two deputies shall, by virtue of paragraph 1 of the present Article, be accorded all diplomatic privileges and immunities, and immunity shall attach to the offices occupied by the Trade Delegation (5th Floor, East Wing, Bush House, Aldwych, London) and used exclusively for the purpose defined in paragraph 3 of the present Article. No member of the staff of the Trade Delegation, other than the Trade Representative and his two deputies, shall enjoy any privileges or immunities other than those which are, or may be, enjoyed in the United Kingdom by officials of the state-controlled trading organisations of other countries.”

“(6) Any questions which may arise in respect of commercial transactions entered into in the United Kingdom by the Trade Delegation shall be determined by the Courts of the United Kingdom in accordance with the laws thereof.”

Additional Protocol.—“ With reference to paragraph 6 of Article 2, it is understood that the privileges and immunities conferred on the head of the Trade Delegation and his two deputies by paragraph 2 of Article 2 of the present Agreement shall not be claimed in connection with any proceedings before the Courts of the United Kingdom arising out of commercial transactions entered into in the United Kingdom by the Trade Delegation of the Union of Soviet Socialist Republics.”

<sup>1</sup> 38 T. L. R. (1921), 259.

<sup>2</sup> *Treaty Series*, No. 19 (1930).

## CHAPTER XVII

### IMMUNITIES OF THE RESIDENCE OF THE DIPLOMATIC AGENT

§ 372. IMMUNITY attaches to the house of the diplomatic agent and other premises devoted to diplomatic purposes, and to any building occupied by him with a view to the execution of his functions, whether the property of his government, or his own, or merely rented by him.<sup>1</sup> No officer of state, and in particular no police officer, tax-collector or officer of a court of law, can enter his residence, nor without consent discharge any function therein. The immunity extends to carriages (though not, of course, as regards compliance with the ordinary regulations governing control of traffic), and also to boats, and it may yet be to aeroplanes.

The Pan-American Convention of February 20, 1928, signed at Havana, which in its preamble says that it incorporates the principles generally accepted by all nations, lays down for the signatory states the following rule: "Art. 16.—No judicial or administrative functionary or official of the state to which the diplomatic officer is accredited may enter the domicile of the latter, or of the mission, without his consent."

§ 373. The immunity of the agent's residence is so generally recognised that it is only necessary to mention briefly certain incidents of the past in which it was called in question.

In 1808 a servant of *Admiral Apodaca*, diplomatic agent of the Supreme Junta of Seville at London, being charged with a criminal offence, was arrested in the legation. Apodaca said that he had no objection to the servant being tried, and convicted if he were found guilty, but he protested against the violation of his diplomatic privilege in arresting a servant within his house without previous notice. In his subsequent report to his Government he stated that the servant had been released, and that he had declared himself satisfied.<sup>2</sup> It seems probable, therefore, that verbal explanations were made to him and some apology offered.

<sup>1</sup> Hurst, *Les Immunités Diplomatiques*, Cours de La Haye (1926), ii. 131, 162.

<sup>2</sup> Villa-Urrutia, i. 304.

In 1827 the coachman of *Mr. Gallatin*, United States minister at London, was arrested in the stable of the legation, charged with assault. The correspondence shows that the British Government upheld the action taken, and that *Mr. Gallatin*, who had in the meantime dismissed the servant, dissented from the views expressed. As the outcome of this case, steps were taken by the British Government to ensure that no similar arrest of the servant of a foreign minister should in future take place without a previous communication being made to the minister, in order that his convenience might be consulted as to the method of putting the warrant into execution.<sup>1</sup>

§ 374. But the immunity affords no justification for giving shelter to criminals, and, in such a case, a government would be justified in taking measures to compel the surrender of the criminal. They might surround the house by police, to prevent the escape of the fugitive, and complain to the government which had accredited the agent, and demand his recall. Neither can the carriage of the agent serve as a refuge.

§ 375. Hall<sup>2</sup> says that in Europe it has been completely established that the house of a diplomatic agent gives no protection either to ordinary criminals or to persons accused of crimes against the state.

“ It is agreed that the house of a diplomatic agent is so far exempted from the operation of the territorial jurisdiction as is necessary to secure the free exercise of his functions. It is equally agreed that this immunity ceases to hold in those cases in which a government is justified in arresting an ambassador and in searching his papers : an immunity which exists for the purpose of securing the enjoyment of a privilege comes naturally to an end when a right of disregarding the privilege has arisen. Whether, except in this extreme case, the possibility of embarrassment to the minister is so jealously guarded against as to deprive the local authorities of all right of entry irrespective of his leave, or whether the right of entry exists whenever the occasion of it is so remote from diplomatic interests as to render it unlikely that they will be endangered, can hardly be looked upon as settled.”<sup>3</sup>

§ 376. Oppenheim goes further :

“ If an envoy abuses this immunity, the receiving government need not bear it passively. There is, therefore, no obligation on the part of the receiving state to grant an envoy the right of affording an asylum to criminals, or to other individuals not belonging to his suite. Of course an envoy need not deny entrance to criminals who want to take refuge in the embassy. But he must surrender them to the prosecuting government at its request ; and, if he refuses, any measures may be taken to induce him to do so, apart

<sup>1</sup> For the correspondence in the case see the 2nd edition of this work, i. 295.

<sup>2</sup> Hall, 233.

<sup>3</sup> Hall, 231.

from such as would involve attack on his person. Thus, the embassy may be surrounded by soldiers, and eventually the criminal may even forcibly be taken out of the embassy. But such measures of force are justifiable only if the case is an urgent one, and after the envoy has in vain been required to surrender the criminal.”<sup>1</sup>

§ 377. Against this may be set the view of Dr. Hannis Taylor, who, after stating that an envoy must not harbour criminals not of his suite, and discussing the right of asylum for political refugees in certain countries, proceeded thus to define the immunity of the agent’s residence :

“ Subject to the foregoing exceptions, the general statement may be made that, while the exact limits of the inviolability of the hotel are not perfectly defined, a fair result of reasoning on principle and of a comparison of authorities is that the residence of the minister should enjoy absolute immunity from the execution of all compulsory process within its limits, and from all forcible intrusions. ‘ If it can be rightfully entered at all without the consent of its occupant it can only be so entered in consequence of an order emanating from the supreme authority of the country in which the minister resides, and for which it will be held responsible by his government ’ ” (Mr. Buchanan, U.S. Secretary of State, to Mr. Shields, March 22, 1848).<sup>2</sup>

§ 378. Vattel says : “ C’est donc au souverain de décider, dans l’occasion, jusqu’à quel point on doit respecter le droit d’asile qu’un ambassadeur attribue à son hôtel ”<sup>3</sup> ; and it seems clear that, in any such eventuality, the action should only be taken with the express authorisation of the government, and on its direct responsibility.<sup>4</sup>

§ 379. In 1929 a serious dispute occurred between Nepal and Tibet, owing to the act of the Tibetan police at Lhasa in entering the Nepalese legation and forcibly removing a man, claiming to be a Nepalese, who, having been arrested for an offence against Tibetan laws, had escaped from gaol, and had taken refuge at the legation. The matter was eventually terminated by a letter of apology addressed by the Tibetan Government to the Nepalese Government, which was accepted by the latter.

§ 380. The immunity of the agent’s dwelling extends to those of his official staff.<sup>5</sup>

“ Pour donner à l’ambassadeur une complète liberté d’action dans l’État qui le reçoit, l’exterritorialité de sa personne seule ne suffit pas. Sa charge et ses devoirs représentatifs le mettent en rapport direct avec son entourage, ensemble par le canal duquel le pouvoir étranger peut agir indirectement sur lui. C’est pourquoi

<sup>1</sup> Oppenheim, i. § 390.

<sup>3</sup> *Droit des Gens*, iv., c. 9, § 118.

<sup>4</sup> Hurst, *op. cit.*, ii. 214.

<sup>2</sup> *A Treatise on Public International Law*, § 313.

<sup>5</sup> Nys, *Le Droit International*, ii. 387.

l'extritorialité de l'ambassadeur a été étendue à certaines personnes et à certaines choses, ayant toutes une relation intime avec l'exercice de ses fonctions. Pour cette cause les personnes qui jouissent de l'extritorialité sont : l'épouse, les enfants, ainsi que les autres membres de la famille de l'ambassadeur ; son personnel de service, savoir—les secrétaires et les attachés d'ambassade, et le personnel de sa maison.”<sup>1</sup>

The Pan-American Convention of February 20, 1928, referred to above in § 372, lays down for the signatory states the following rules : “ Article 14.—Diplomatic officers shall be inviolate as to their persons, their residence, private or official, and their property. This inviolability covers : (a) all classes of diplomatic officers ; (b) the entire official personnel of the diplomatic mission ; (c) the members of the respective families living under the same roof ; (d) the papers, archives, and correspondence of the mission.”

§ 381. Article 4 of a decree of the Soviet Union of January 14, 1927, framed on a basis of reciprocity, declares that the premises occupied by diplomatic missions, and also the premises in which the following persons and their families are living, viz. : counsellors (including commercial), first, second and third secretaries and attachés (including commercial, financial, military and naval), enjoy immunity. In these premises domiciliary search or seizure can only take place at the request of, or by agreement with, the diplomatic representative, provided that when the search or seizure is carried out, it takes place in the presence of a representative of the Procurator's department and of a representative of the People's Commissariat for Foreign Affairs if there should be one in the given locality. Such premises may not be sealed up. Entry into them may not take place otherwise than with the consent of the diplomatic representative. Nevertheless the immunity of these premises does not confer the right forcibly to detain any person whatsoever therein, nor does it confer the right to afford asylum to persons in regard to whom decisions have been taken by the organs of the Soviet Union and Allied Republics authorised thereto in regard to the arrest.

§ 382. If a crime is committed within the embassy or legation by a person from without, the offender should be handed over to the local authorities.

“ Lorsque les sujets du pays, dans le sens restreint ou étendu, *subditi temporarii ou perpetui*, commettent un méfait dans un hôtel d'ambassade, la compétence des tribunaux locaux doit être absolument reconnue ; ce qui n'empêche pas que l'hôtel de l'ambassade soit extritorial, dans le sens d'une exemption du pouvoir territorial de l'État, autant que cela paraîtrait nécessaire pour le libre exercice des fonctions de l'ambassadeur.”<sup>2</sup>

<sup>1</sup> Heyking, *L'Extritorialité*, Cours de La Haye (1925), ii. 267.

<sup>2</sup> *Ibid.*, 269.

The Pan-American Convention of February 20, 1928, referred to above, lays down for the signatory states the following rule : "Article 17.—Diplomatic officers are obliged to deliver to the competent local authority that requests it any person accused or condemned for ordinary crimes, who may have taken refuge in the mission." (See also § 396.)

In 1865 a Russian subject named *Mickilchenkoff* (or *Nikitschenkow*), having obtained admission into the Russian embassy at Paris, assaulted and wounded an attaché, and the police being applied to, entered the house and arrested him. The ambassador demanded that the man should be given up to him, to be sent to Russia for trial. The French Government refused, saying that the principle did not cover the case of a stranger entering the embassy and there committing a crime, but that, even if it did, the privilege had been waived by calling in the police. The Russian Government admitted the jurisdiction of the French court, and the prisoner was tried by the local law.<sup>1</sup>

In 1880 the tribunal at Berlin gave a decision in the same sense in the case of an offence committed in a foreign embassy at Berlin by a foreigner who formed no part of the personnel of the mission.<sup>2</sup>

In 1909 a similar attempt was made in the Bulgarian legation at Paris, against a member of the personnel, by a Bulgarian named *Trochanoff*, and the minister himself initiated criminal proceedings against the offender before the tribunal of the Seine. The court rejected the theory put forward in defence that the offence having been committed in the legation should be considered as having been committed in foreign territory ; so far as regards *Trochanoff* the legation formed part of the territory of France.<sup>3</sup>

Certain other cases in Germany, France and Italy, involving the exercise of the local criminal or civil jurisdiction in respect of events which had happened within a foreign embassy or legation, are referred to by Sir C. Hurst.<sup>4</sup> On the other hand :

In 1928, in a case before the Supreme Court of Hungary, concerning one *Zoltán Sz.*, who had induced the passport authorities in the Hungarian legation at Vienna to issue a passport by fraudulent means, it was held that the premises, which enjoyed the privileges of extritoriality, must be regarded as Hungarian territory, and that accordingly all acts committed therein must be judged according to the rules of Hungarian law.<sup>5</sup>

§ 383. The enforced detention of a private person within a foreign embassy or legation would call for the intervention of the government concerned.

<sup>1</sup> Wheaton, *International Law*, 339.

<sup>3</sup> Clunet (1910), 551.

<sup>5</sup> *Annual Digest* (1927-8), Case No. 252.

<sup>2</sup> Clunet (1882), 326.

<sup>4</sup> *Op. cit.*, ii. 147-9.

In 1896 *Sun Yat-Sen*, a Chinese national, and political refugee, was detained as a prisoner in the Chinese legation at London, with the apparent intention of transporting him to China. On the matter coming to light, his friends applied to the court for the issue of a writ of habeas corpus, but the court declined,<sup>1</sup> doubting the propriety of such action where a foreign legation was concerned, and considering the matter rather one for diplomatic proceedings. The Chinese minister was thereupon formally requested to release the man, whose detention was contrary to law, and an abuse of diplomatic privilege. He was released on the following day.

§ 384. A curious incident, reported in the Press of October 1929,<sup>2</sup> related to the counsellor of the Soviet embassy at Paris, who, having been ordered to return to Russia, escaped from the embassy, and complained to the police that his wife and child were detained within it. But, in the absence of the ambassador, he became temporarily the head of the mission, and in this capacity, with the assistance of the police, the release of the family was effected.

§ 385. The immunity of the residence extends also to all goods requisite for the fulfilment of the mission.

Toutes les choses qui appartiennent à la personne du ministre, tout ce qui sert à son entretien et à celui de sa maison, tout cela a l'indépendance du ministre, et est absolument exempt de toute juridiction dans le pays. (Vattel.)<sup>3</sup>

§ 386. A case to the contrary, which is often mentioned, is that of Mr. Wheaton, United States minister at Berlin in 1839.

Under the Prussian civil law then in force, the proprietor of the house in which Mr. Wheaton resided claimed the right of detaining his goods found on the premises at the expiration of the lease, in order to secure payment of damages alleged to be due for injuries to the house during the contract. The Prussian Government decided that the general exemption, under the law of nations, of the personal property of foreign ministers from the local jurisdiction did not extend to the case where, it was contended, the right of detention was created by the contract itself, and by the legal effect given to it by the local law. The matter was argued between the Prussian and the United States governments without their being able to come to an agreement on the point of law.<sup>4</sup>

§ 387. The view of the United States Government in such a matter was shown in the case of an attaché to the French legation at Washington, whose landlord sought to prevent his

<sup>1</sup> *Mew's Digest of English Law Cases*, ii. 306 ; Shortt and Mellor's *Practice of the Crown Office* (2nd ed.), 318.

<sup>2</sup> *Times*, Oct. 4, 1929. <sup>3</sup> *Droit des Gens*, iv. c. 8, § 113. <sup>4</sup> Wheaton, *op. cit.*, 347.

departure. The United States attorney-general said it was impossible to have recourse to force to seize the property of a public minister, whether personal or official, against his will, by process or otherwise ; neither international law nor American law recognised any difference.<sup>1</sup>

§ 388. The inviolability of the agent's residence extends to goods therein, though not the property of a person having claim to diplomatic immunity ; execution cannot therefore be levied on such goods without the agent's consent.<sup>2</sup>

§ 389. While it is generally recognised that a diplomatic agent preserves his immunity on the termination of his mission for such reasonable time as may be necessary to enable him to complete and dispose of the affairs of his mission, yet on his departure goods left by him become, in the event arising, subject to the local jurisdiction.<sup>3</sup>

§ 390. As regards inquests, in the case of deaths which may occur within an embassy or legation, see §§ 351-2.

### *Right of Asylum*

§ 391. It is now an established doctrine in Europe that no right to give asylum to political refugees in the house of a diplomatic agent exists.<sup>4</sup> But formerly the practice was extensively exercised, and in Spain during the civil war between Christinos and Carlists, and in 1848, and between 1865 and 1875. And at Constantinople in 1895 a former Turkish grand vizier took shelter at the British embassy there until an assurance was received that his life was in no danger.

§ 392. Among notable cases of the past are the following :

In 1726 the *Duke de Ripperda*, a Dutch officer, and minister of the States-General at Madrid, who afterwards became Spanish minister of finance and foreign affairs, fell into discredit, and, alarmed at the readiness with which his resignation was accepted, fled to the British embassy. The ambassador gave an assurance that he would not allow Ripperda to leave until he had given up certain important papers of state said to be in his possession. Nevertheless, soldiers were posted in the vicinity of the embassy, with orders to examine all persons and carriages issuing from it, and the Spanish Council of Castile having been invoked, held that the Duke had been guilty of *lèse-majesté*, and that he could be taken by force from the embassy without infringing the privileges awarded to ambassadors or violating the law of nations. Ripperda was thereupon arrested within the embassy by armed force and his

<sup>1</sup> 5 *Op. of Att.-Gen.*, 69 ; Deák, *Classification, etc., des Agents diplomatiques*, *Revue de Droit International* (1928), 536.

<sup>2</sup> Hurst, *op. cit.*, ii. 192.

<sup>3</sup> *Ibid.*, 240.

<sup>4</sup> Hall, 233.

papers seized. In the correspondence which followed, the British Government protested that only an extreme necessity could justify the violation of the immunity of an ambassador's house, and expressed the hope that the Spanish King would see that it was to his own interest to make the necessary reparation. But on receiving the reply that the Spanish King saw no reason to concern himself further about the affair, the correspondence assumed a bitter tone. Hostilities having broken out in the following year, peace was not restored till the signature of the Treaty of Seville in 1729, in Article 1 of which it was stipulated that there should be "an oblivion of all that is past."<sup>1</sup>

### § 393.

In 1747 one *Springer*, a Russian subject, domiciled at Stockholm, being accused of high treason against the King of Sweden, took refuge in the *hôtel* of the British minister at Stockholm. Under threats of compulsion, the minister consented to surrender the man, but protested against the violation of the law of nations and the privileges of diplomatists. On receiving his report, the British Government instructed him to address to the King of Sweden a memorial, in which it was laid down as an incontrovertible maxim that the residence of a foreign minister ought to enjoy the right of asylum, so long as the right was not abolished by mutual consent. In reply, the Swedish Government denied the assertions of the minister as to the treatment he had received, and sought to lay the whole blame on him for what had occurred. As a result, the minister was instructed to leave Stockholm as soon as possible, without taking leave of the King, and the Swedish minister in London received similar orders in consequence.<sup>2</sup>

§ 394. In Latin-American countries asylum has often been sought at foreign legations by political refugees on the occasion of revolutionary outbreaks, and the custom exists up to the present day. A report from the *Times* correspondent at Rio de Janeiro of November 15, 1930,<sup>3</sup> after the recent civil disturbances in Brazil, says :

"The Secretary of the Cattete Palace<sup>4</sup> announces that political refugees in foreign embassies and legations will, in accordance with international law, be granted permission to leave for some place abroad, so long as they do not go to neighbouring countries. The Provisional Government is working with the embassies and legations concerned to settle the date of departure. When this has been accomplished, the refugees will leave by the first available steamers, without prejudice to the actions and trial which some of them will have to answer later for alleged offences committed against federal and state treasuries."

<sup>1</sup> C. de Martens, *Causes célèbres, etc.*, i. 174 ; Jenkinson, ii. 307.

<sup>2</sup> C. de Martens, *op. cit.*, i. 326.

<sup>3</sup> *Times*, Nov. 16, 1930.

<sup>4</sup> The official residence of the Federal President.

§ 395. In 1889 a convention regarding international criminal law was concluded between the Argentine Republic, Bolivia, Paraguay, Peru and Uruguay, by Article 17 of which it was provided that asylum in a legation should be respected in the case of persons prosecuted for political offences, with the obligation for the head of the legation immediately to acquaint the government of the state to which he was accredited with the fact, which government could demand that the refugee should be sent out of the national territory with as little delay as possible. The head of the mission could, in his turn, demand the necessary guarantees for the fugitive being allowed to leave the territory without interference. The same principle was to be observed with respect to refugees who found asylum on board vessels of war lying within territorial waters. But this Article only applied as between the contracting parties.

Nevertheless, non-signatory Powers, such as the United States, Great Britain and France, besides others, have on various occasions granted diplomatic asylum to political refugees. During the civil war in Chile in 1891 as many as eighty were received in the United States legation, as many more in that of Spain, five in the French, two in the German and eight in the Brazilian legations.<sup>1</sup>

§ 396. At the Pan-American conference at Havana in 1928 a convention was signed between the American republics represented, with a view of fixing the rules to be observed in their mutual relations for the grant of asylum. This convention of February 20, 1928, provides :

“Art. 1.—It is not permissible for states to grant asylum in legations, warships, military camps or military aircraft, to persons accused or condemned for common crimes, or to deserters from the army or navy.

Persons accused of or condemned for common crimes taking refuge in any of the places mentioned in the preceding paragraph shall be surrendered upon request of the local government. . . .

Art. 2.—Asylum granted to political offenders in legations, warships, military camps or military aircraft, shall be respected to the extent to which allowed, as a right, or through humanitarian toleration, by the usages, the conventions, or the laws of the country in which granted, and in accordance with the following provisions :

- (1) Asylum may not be granted except in urgent cases and for the period of time strictly indispensable for the person who has sought asylum to ensure in some other way his safety ;

<sup>1</sup> *Foreign Relations of the United States*, 1891.

- (2) Immediately upon granting asylum, the diplomatic agent, commander of a warship or military camp or aircraft, shall report the fact to the minister of foreign relations of the state of the person who has secured asylum, or to the local administrative authority, if the act occurred outside the capital ;
- (3) The government of the state may require that the refugee be sent out of the national territory within the shortest time possible ; and the diplomatic agent of the country who has granted asylum may in turn require the guarantees necessary for the departure of the refugee, with due regard to the inviolability of his person, from the country ;
- (4) Refugees shall not be landed in any point of the national territory nor in any place too near thereto ;
- (5) While enjoying asylum, refugees shall not be allowed to perform acts contrary to the public peace ;
- (6) States are under no obligation to defray expenses incurred by one granting asylum."

"The delegation of the United States of America in signing the present convention establishes an explicit reservation, placing on record that the United States does not recognise or subscribe to, as part of international law, the so-called doctrine of asylum."

§ 397. In matters of the kind the general recommendation would seem to be that the practice of affording asylum to political refugees in countries where this custom still exists should be confined within the narrowest limits, and that the persons concerned should not be allowed to communicate with partisans outside the legation, while their departure should be insisted on as soon as possible, or as soon as their departure from the country can be arranged with the consent of the local authorities. If compelled to receive persons of his own nationality exposed to acts of violence, the same principles should as far as possible be followed by the diplomatic agent.<sup>1</sup>

### *Franchise du Quartier*

§ 398. This was an ancient custom in Europe which has but a historical interest. The expression covered two privileges formerly claimed by ambassadors in several countries, namely the right to prevent the arrest of persons dwelling in the vicinity of their embassy, and the exemption from octroi tax of supplies brought in nominally for their use. Sismondi says :

<sup>1</sup> Hurst, *op. cit.*, ii. 217.

“Les ambassadeurs ne voulaient permettre l'entrée de ces quartiers à aucun officier des tribunaux et des finances du Pape. En conséquence, ils étaient devenus l'asile de tous les gens de mauvaise vie, de tous les scélérats du pays ; non seulement ils venaient s'y dérober aux recherches de la justice, ils en sortaient encore pour commettre des crimes dans le voisinage ; en même temps ils en faisaient un dépôt de contrebande pour toutes les marchandises sujettes à quelques taxes.”<sup>1</sup>

§ 399. A case of the sort in which France was involved during the pontificate of Alexander VII may serve as an example :

In 1660 two or three constables went to arrest for debt a trader lodged near the palace of the Cardinal d'Este, who was *cardinal-comprotecteur des affaires de France*. In that character he claimed the *franchises du quartier*, together with the right of fixing its limits. Several of His Eminence's people tried to prevent the police from executing the warrant on the pretext of the franchises, and, on their persisting, the Cardinal's servants drew their swords and forced the officers to withdraw. Don Mario Chigi, brother of the Pope, and commander of the Papal troops, alleging that the principle of the Cardinal's palace did not extend so far as was asserted, ordered the Chief of Police to proceed to the trader's house with sufficient men to effect the arrest. On this becoming known to the Cardinal's people, they hastened to the spot in great force, attacked the Chief of Police, killed three of his men, wounded several others, and rescued the prisoner. The Cardinal, apprehensive of the consequences to himself, sent his chamberlain to Don Mario to offer an apology, alleging that he had had no share in what had passed. The apology was received very coldly, but the affair was hushed up, the Pope consenting to grant absolution for the offence.

Other incidents of a similar kind are set out in the second edition of this work.

§ 400. Pope Innocent XI induced the Emperor, the Kings of Spain (in 1683), Poland (in 1680), England (in 1686), and the Republic of Venice to agree to the abolition of the privileges claimed, but it was not till 1693 that the King of France formally consented to abandon them, when the question was finally laid to rest.<sup>2</sup>

§ 401. But in China, after the Boxer outrages of 1899, the final protocol of September 7, 1901, between the foreign Powers and that country, for the resumption of friendly relations, provided <sup>3</sup> :

<sup>1</sup> *Histoire des Français*, xxv. 552.

<sup>2</sup> Flassan, iv. 97 ; Gerin, *Revue des questions historiques*, xvi. 3, 8.

<sup>3</sup> *Treaty Series*, No. 17 (1902).

“ Art. 7.—Le Gouvernement Chinois a accepté que le quartier occupé par les légations fût considéré comme un quartier spécialement réservé à leur usage et placé sous leur police exclusive, où les Chinois n’auraient pas le droit de résider, et qui pourrait être mis en état de défense.

Les limites de ce quartier ont été ainsi fixées sur le plan ci-joint (Annexe No. 14). . . .

Par le Protocole annexé à la lettre du 16 janvier, 1901, la Chine a reconnu à chaque Puissance le droit d’entretenir une garde permanente dans le dit quartier pour la défense de sa légation.”

§ 402. In 1927, when the Chinese Government sought to search certain premises of the Soviet embassy at Peking, they asked and obtained permission of the diplomatic corps to enter the reserved quarter for the purpose ; but the troops employed having exceeded the terms of the permission, the Powers demanded that the offenders should be brought to trial, and the prefect of police gave an assurance to the doyen of the diplomatic corps that this would be done.<sup>1</sup>

### *Bast*

§ 403. Within modern times a custom existed in Persia of taking “ bast,” or shelter, in a foreign legation as a means of asserting grievances, and the principles of courtesy prevailing in that country precluded the denial of hospitality in this way, whatever inconvenience might be caused.<sup>2</sup> The following account of an incident of the kind is quoted from “ The Biography of Sir Mortimer Durand,” formerly British minister at Tehran <sup>3</sup> :

“ One day a royal eunuch came galloping into the legation in great haste to see me on most important business. The message was that the Shah’s wives had taken umbrage at his decision to marry a girl who was sister of one of his wives. The new favourite was a daughter of a gardener whom the uxorious monarch had seen in one of his many gardens and loved, to the great indignation of her sister, and against Persian custom.

The other wives took up the matter hotly, and issued an ultimatum that if the Shah would not forgo his purpose they would all leave the Palace, and take *bast* at the legation, which was, they declared, a place of refuge for slaves like themselves, and a sanctuary for the oppressed.

I expressed myself as being highly honoured at this proof of their confidence, and declared that the legation was at the service of the ladies. Upon enquiring the size of the party, I was somewhat

<sup>1</sup> Yoshitomi, *Revue Générale de Droit International Public* (1928), 184.

<sup>2</sup> Hurst, *op. cit.*, ii. 218.

<sup>3</sup> By Brig.-Genl. Sir P. Sykes, 233.

staggered to learn that there would be about three hundred in all. I said that the legation would hardly hold so many, but with a sweep of his hand towards the lawn, the eunuch replied that a tent was all that was required, and, as for food, a few sheep and some bread would suffice.

The eunuch then galloped off, and returned two hours later, by which time tents had been pitched on the lawn, sheep had also been purchased, together with the entire contents of a baker's shop. He declared that the arrangements were excellent, that the Shah was furious, and that the ladies were getting into their carriages. He again galloped off, and we awaited the arrival of the refugees with keen interest, when the eunuch reappeared like a whirlwind, and shouted out, wild with excitement, 'The Shah has yielded, the ladies are getting out of their carriages, and send you their grateful thanks !''

§ 404. On another occasion, in 1906, no fewer than fourteen thousand merchants and others took "bast" at the British legation, and remained there for over a week, as a method of asserting their demands for constitutional reforms on the part of the Persian Government.<sup>1</sup>

### *Right of Chapel*

§ 405. It is universally recognised that a diplomatic agent is entitled to have a chapel within his residence, wherein the rites of the religion which he professes may be celebrated by a priest or minister. Usually bells were not permitted,<sup>2</sup> and formerly, in Spain, it was required that the exterior of the building should not indicate the purpose to which it was devoted. The spread of religious toleration in modern times has rendered possible the erection of public places of worship other than that professed by the state, and in general the right of the agent to the free exercise of his religion is now unquestioned. But formerly it was hedged with certain restrictions, and is the subject of examination by writers on international law.

"Tous les Ambassadeurs, les Envoyez & les Residens ont droit de faire librement dans leurs maisons l'exercice de la Religion du Prince ou de l'État qu'ils servent, & d'y admettre tous les sujets du même Prince qui se trouvent dans le pays où ils resident."<sup>3</sup>

§ 406. Phillimore deduces this right of the agent as a corollary from the right to enjoy the most perfect and uncontrolled liberty of action within the precincts of his *hôtel* (which

<sup>1</sup> Hurst, *op. cit.*, ii. 220.

<sup>2</sup> Calvo, *Le Droit international, etc.*, ii. 326 ; Ullmann, 189.

<sup>3</sup> Callières, 160.

excluded the keeping of a gambling table in countries where gambling is prohibited, or of any kind of shop) :

“ Strictly speaking, however, this privilege is confined to himself, his suite, his fellow-countrymen commorant in the foreign land ; for, although he cannot be prevented from receiving native subjects who come to his *hôtel*, yet it is competent to the state to prohibit them from going to the *hôtel* for this or any other purpose.”<sup>1</sup>

§ 407. According to Wicquefort,<sup>2</sup> the state might require that the religious service be performed in the native language of the ambassador. But this does not seem tenable, for the sanctity of the *hôtel* must be violated in order to ascertain the language, and there never could have been any reason for preventing the ambassador or his chaplain from the use of the universal or Latin language in their devotions. The restraint must be placed by the state, if at all, on its own subjects.

“ Since the period of the Reformation, general international usage has sanctioned the right of private domestic devotion by a chaplain in the *hôtel*, which, so long as it is strictly private, seems to claim the protection of natural as well as conventional international law. Two conditions, however, have formerly accompanied the permission to exercise this right ; one, that it should be permitted to only one minister at a time from one and the same court ; another, that there should not be already a public or private exercise of the religion existing and sanctioned without the limits of the *hôtel*.

Having regard to this latter condition, the Emperor Joseph II, in 1781, having permitted to the Protestants of Vienna the liberty of meeting for the private exercise of their devotion, insisted on the chapels of the Protestant ambassadors being closed. The right to have places of worship was subject to certain restrictions, *e.g.* the ringing of a bell was prohibited.

There does not, however, seem to be any foundation in principle for this very arbitrary act ; more especially as Protestant is a mere term of negation, under which are included worshippers of very different tenets.

The only sound principle of law on this subject is that already mentioned, *viz.* : Religious rites privately exercised within the ambassadorial precincts, and for his suite and countrymen, ought not to be interfered with.

The erection of a chapel or church, the use of bells, and of any national symbol, is a matter entirely of permission and courtesy.”<sup>3</sup>

The Papal Government informed the Prussian envoy, in 1846, that services in the Italian language in the chapel of the legation would not be tolerated.<sup>4</sup>

<sup>1</sup> Phillimore, ii. 244.

<sup>3</sup> Phillimore, ii. 244 ; Holtzendorff, iii. 659.

<sup>2</sup> i. 417.

<sup>4</sup> Holtzendorff, iii. 659.

## CHAPTER XVIII

### EXEMPTION FROM TAXATION

§ 408. HALL says <sup>1</sup> :

“The person of a diplomatic agent, his personal effects, and the property belonging to him as representative of his sovereign, are not subject to taxation. Otherwise he enjoys no exemption from taxes or duties as of right. By courtesy, however, most, if not all, nations permit the entry free of duty of goods intended for his private use.”

§ 409. And Oppenheim <sup>2</sup> :

“The fifth privilege of envoys in reference to their extritoriality is exemption from taxes and the like. As an envoy, through his extritoriality, is considered not to be subjected to the territorial supremacy of the receiving state, he must be exempt from all direct personal taxation, and therefore need not pay either income tax or other direct taxes. As regards rates it is necessary to draw a distinction. Payment of rates imposed for local objects for which an envoy himself derives benefit, such as sewerage, lighting, water, night-watch and the like, can be required from the envoy, although often this is not done. Other rates, however, such as poor-rates and the like, he cannot be requested to pay. As regards customs duties international law does not claim the exemption of envoys therefrom. In practice, and by courtesy, however, the municipal laws of many states allow diplomatic envoys, within certain limits, to receive free of duty goods intended for their own private use. If the house of an envoy is the property of his home state, or his own property, the house need not be exempt from property tax, although it is often so by the courtesy of the receiving state. Such property tax is not a personal and direct, but an indirect, tax.”

§ 410. Rivier observes <sup>3</sup> :

“En vertu d'une coutume qui varie, et qui est, en certains pays, consacrée par la loi, et à moins de suspicion motivée de fraude, on ne visite pas leurs effets à la douane.

<sup>1</sup> Hall, 235.

<sup>3</sup> *Principes du Droit des Gens*, i. 503.

<sup>2</sup> Oppenheim, i. § 394.

“En revanche et sauf dispenses conventionnelles spéciales, ils payent comme tout le monde les impôts fonciers et autres charges réelles pour les immeubles qu'ils possèdent dans le pays ; les contributions municipales imposées à l'habitant comme tel ; les impôts indirects frappant les objets de consommation qu'ils achètent dans le pays ; les droits qui ont le caractère d'une rémunération due à l'État ou à la commune, ou à des particuliers, pour des objets à l'usage desquels l'agent participe ; péages de chaussées et de ponts, taxes télégraphiques, taxes de chemin de fer, port de lettres, etc. ; enfin, les droits qui sont exigés à l'occasion de certains actes ou transmissions, droit de mutation, d'enregistrement.”

§ 411. Recently M. Deák writes :

“L'exemption fiscale, bien qu'elle soit généralement admise en théorie, rencontre des difficultés dans la pratique et dans son application. Les opinions sont divergentes sur le point de savoir si la propriété privée d'un agent diplomatique doit être exempte d'impôts. Une autre difficulté surgit lorsque l'agent est un ressortissant du pays où il réside ; la discussion entre le Secrétariat de la Société des Nations et le Gouvernement suisse portait principalement sur ce point.”<sup>1</sup>

The Pan-American Convention of February 20, 1928, lays down for the signatory states the following rules : “Article 18.—Diplomatic officers shall be exempt in the state to which they are accredited : (1) from all personal taxes, either national or local ; (2) from all land taxes on the building of the mission, when it belongs to the respective government ; (3) from customs duties on articles intended for the official use of the mission, or for the personal use of the diplomatic officer or of his family.”

§ 412. That the privilege of free entry of goods, intended for the use of the envoy, was formerly much abused can well be believed. Callières said :

“Il y a plusieurs ministres qui abusent du droit de franchise qu'ils ont en divers pays touchant l'exemption des impôts sur les denrées & sur les marchandises nécessaires à l'usage de leur maison, & qui sous ce prétexte en font passer quantité d'autres pour des Marchands dont ils tirent des tributs en leur prêtant leur nom pour frauder les droits du Souverain. Ces sortes de profits sont indignes d'un Ministre public, & le rendent odieux à l'État qui en souffre du préjudice, ainsi que le Prince qui les autorise. Un sage Ministre doit se contenter de jouir des franchises qu'il trouve établies dans le pays où il est envoyé, sans jamais en abuser pour son profit particulier par des extensions injustes, ou en participant à des fraudes qui se font sous son nom.

Le Conseil d'Espagne a été obligé depuis quelques années de

<sup>1</sup> *Classification, etc., des Agents diplomatiques, Revue de Droit International* (1928), 565.

règler ces droits de franchise pour tous les Ministres Étrangers qui résident à Madrid, moyennant une somme par an qu'on y donne à chacun d'eux à proportion de leur caractère, pour empêcher ces abus ; & la République de Genes en use de même à l'égard des Ministres des Couronnes qui résident chez elle."<sup>1</sup>

§ 413. Bismarck said one day, *à propos* of Morny :

When he was appointed ambassador at Petersburg, he arrived with a whole string of fine, elegant carriages, and a host of trunks, boxes and chests, full of laces, silk-stuffs and ladies' dresses, for which as ambassador he had no duties to pay. Each servant had his own coach, each attaché or secretary two at least, and he himself quite five or six ; and, as he was there for a few days, he auctioned the lot—carriages and laces and wearing apparel. He must have made eight hundred thousand roubles. He was unscrupulous but amiable, he could really be most amiable.<sup>2</sup>

Let us hope this story is at least an exaggeration.

§ 414. Exemptions accorded in Great Britain to diplomatic agents are :

#### *Customs Duties*

The privilege granted to heads of missions to receive free of duty articles imported for their private use is not held to be in the nature of a right, but is conceded as a matter of international courtesy. The ordinary scale is :

(a) On first arrival. Exemption from examination of their baggage and that of their wives and families.

(b) On subsequent arrivals. Exemption from examination on production of a baggage pass, which may be obtained by the head of the mission, on application to the Foreign Office, for his personal use on occasions when returning to Great Britain from abroad.

(c) Delivery duty free of imported packages for their personal use and that of their families.

An extension of (a) and (c) to counsellors, secretaries and attachés is permissible, but only on condition of reciprocity. While no restriction is placed on the amount of dutiable goods imported, it is expected that the privilege will not be abused. Articles such as official furniture, stationery, office supplies, etc., for use in the mission are at present admitted without examination.

Foreign Ministers of State, or members of special diplomatic missions, visiting or passing through Great Britain, are accorded every consideration and facility consistent with the Customs regulations.

In all the above cases except (b), where the exhibition of the baggage pass suffices, application must, in each instance, be ad-

<sup>1</sup> Callières, 163.

<sup>2</sup> Busch, *Bismarck, Some Secret Pages*, etc., i. 503.

dressed to the Foreign Office in a note bearing the personal signature of the head of the mission, giving all necessary details for identification of the goods, such as place and date of importation, name of ship, name of agents entrusted with clearance, etc. Arrangements for handling and removing the goods must be made by and at the expense of the importer. Packages arriving by post are handed to the postal officers for delivery as soon as the relevant application is received.

Packages addressed to heads of missions, bearing the seal of their Foreign Office, and claimed as despatches, are ordinarily passed without examination or other formality.

#### *Motor Cars*

Cars for the personal use of heads of missions and their families are admitted free of duty. Cars for the personal or family use of counsellors, secretaries or attachés, are also admitted free of duty, either as a result of reciprocal arrangement or on undertakings signed by them that if the cars are sold in the United Kingdom, or retained there after their appointment in the mission terminates, the duty chargeable on importation will be paid. Cars which are the property of a foreign government, and intended for the official use of members of the mission, are admitted free of duty, provided reciprocal treatment is accorded, but subject to an undertaking, signed by the head of the mission, that if sold in the United Kingdom any duty chargeable will be paid. In such cases this is calculated on the sale value of the vehicle.

#### *Income Tax*

Diplomatic emoluments, salary or wages paid to any member of the official or domestic staff of a foreign mission—except a British subject on the official staff—in respect of his duties in connection therewith, are exempt from income tax. But no exemption is recognised in respect of other earnings in the United Kingdom.

Income from investments outside the United Kingdom, even if payable therein, is exempt, and repayment made if taxed before receipt of income. Income derived from investments in the United Kingdom is not exempt, except in the case of the head of the mission if the interest or dividends arise out of any British Government security.

In the case of houses or land, occupied by an individual for diplomatic purposes, he is exempted from any charge to income tax in respect of his occupation, and also, if he owns the property, from income tax in respect of his ownership.

No title to exemption is recognised in any other circumstances, but where there is income liable to assessment, the usual reliefs are given to the same extent as in other cases.

*Motor Car Licence Duty*

Exemption from payment is accorded, on condition of reciprocity, to the cars of all heads of missions, as well as to the cars used for official purposes of senior counsellors, or (if there is no senior counsellor) the senior secretary, and also to the cars so used of naval, military, and air attachés, whether the cars be owned by them or their government, provided the head of the mission personally certifies that the cars for which exemption is claimed are used by diplomatists of the specified ranks, and are necessary for the discharge of their official duties. Members of the diplomatic body not so entitled are at present allowed one-third rebate of the duty, viz. : the proportion normally accruing to the Exchequer for national purposes.

*Local Taxation Licences*

Members of the diplomatic body are accorded as an act of courtesy exemption from payment of duty on firearms, and also on the following licences :

To employ male servants ; to keep carriages ; to use armorial bearings ; to keep dogs ; to kill game ; to employ a gamekeeper to kill game.

*Municipal Rates*

Under a reciprocal arrangement proposed to heads of foreign missions in 1892, heads of missions and the members of their diplomatic and official staffs are exempted from payment of municipal rates leviable on the premises occupied by them, in respect of services not of direct benefit to them. Where this arrangement is accepted, the British Government undertakes (except in the case of honorary attachés and consular officers holding diplomatic rank) to bear the charges for :

Guardians of the poor, *i.e.* poor relief proper ;  
Police rate ;  
Baths and washhouses ;  
Public libraries and museums ;  
Burial board ;  
Miscellaneous expenses, salaries, printing, etc. ;  
Education ;

the following charges being recoverable from members of the mission, on application through the Foreign Office :

London County Council, *i.e.* main drainage, street improvements, fire brigade, etc.  
Street lighting.  
General rate for cleansing, maintaining and repairing the public streets, and general expenses under the Metropolitan Local Management Act.  
Public sewers rate.

§ 415. Exemptions accorded to diplomatic agents in certain other countries, so far as ascertained, are as follows :

#### BELGIUM

Exemption is granted from the greater part of state taxation, on a basis of reciprocity, and if the persons concerned are *bonâ fide* members of the mission ; but not if, being resident in Belgium, their functions are merely auxiliary or provisional. The exemption extends to heads of missions, counsellors, secretaries, attachés, chancellors and chancery clerks, interpreters and dragomans, plenipotentiaries, military and commercial attachés, legal counsellors and attachés, chaplains and doctors.

*Customs duties.*—Heads of missions, on their entry into Belgium, and on making themselves known to the customs, are exempted from visit and payment of duty in respect of baggage and other articles accompanying them, belonging to and claimed by them ; and also, on a basis of reciprocity, from payment of duties on goods addressed to them. The privilege extends to *chargés d'affaires*. Counsellors, secretaries and attachés enjoy exemption only when acting *ad interim* as head of the mission ; but on first arrival their goods and effects are admitted free.

*Property tax.*—Exemption is accorded in respect of the tax on revenue from real property occupied by diplomatic agents, where such property belongs to the state represented and forms the seat of the mission ; but not as regards revenue derived from other real property in Belgium.

*Income Tax.*—Exemption is accorded in respect of income derived from abroad. In the case of income derived from investments in Belgium rebate may be accorded in certain instances if the investments are on the account of and to the profit of the government concerned. Exemption from supertax is accorded.

Exemption is also accorded from *Taxe de Luxe* and *Taxe de Transmission* (conditionally), and from taxes on motor-cars, servants, horses and carriages, dogs and bicycles, sporting guns and furniture ; also from death duties in respect of diplomats dying in Belgium, except as regards real property situated in Belgium. On the other hand, “*taxes de salubrité publique*,” “*adresses télégraphiques*” and “*droits d'enregistrement et de transcription de mutation*” are payable.

#### § 416.

#### FRANCE

*Customs duties.*—On a reciprocal basis heads of missions are accorded exemption from visit and payment of duty on goods accompanying them on their arrival in France, or imported within a period of six months thereafter ; subsequent importations require special application to the ministry for foreign affairs.

Exemptions are also accorded in respect of income tax, billeting, and the following : *contribution personnelle et mobilière*, *contribution des portes et fenêtres*, *taxes assimilées aux contributions directes* (*taxes de*

*viabilité, pavage, trottoirs, raccordements, taxes sur les chiens, contributions sur les voitures, les chevaux, taxe des billards, etc.*). These exemptions are extended to official secretaries of the mission resident without the embassy or legation.

## § 417.

## GERMANY

*Customs Duties.*—Complete exemption is accorded to heads of missions for goods imported by them for their personal use. Exemption is accorded to members of their staffs on a basis of reciprocity.

*Income Tax.*—Complete exemption is accorded to heads of missions and members of their staffs.

*Motor Taxation.*—Complete exemption is accorded to heads of missions. In the case of members of their staffs one-third of the tax is remitted.

*Local Taxes.*—Where these represent definite services rendered, such as drainage, water-supply, street-cleaning, dust cart and similar services, they are chargeable both on the embassy building and on the residences of members of the diplomatic staff.

## § 418.

## ITALY

*Customs Duty (Dazio Consumo).*—Parcels for members of the diplomatic corps are exempted from payment of duty, on application made on special forms furnished by the ministry for foreign affairs; such applications must be signed by the head of mission, and give details of the number and weight of the parcels and a rough description of contents.

*Tobacco Monopoly.*—Foreign manufactured tobacco, destined for heads of missions and other members of the diplomatic corps, is exempted without limitation from customs and octroi duties, if reciprocal treatment is accorded. The customs are, however, authorised to sequester any tobacco in excess of 300 cigarettes found in the luggage of diplomatic representatives, this quantity being considered a generous allowance.

*Tax on Personal Property (Richezza mobile).* Diplomatic agents are exempt. This tax covers income from all sources except real property, *i.e.* revenue from interest on capital, profits on industry, salary, etc. They are also exempt from supplementary graduated income tax (*supertax*).

*Carriage Tax, Motor Tax, and Servant Tax.*—Exemption accorded on condition of reciprocity.

*Land and House Property Tax.*—On condition of reciprocity, the residences of foreign diplomatic representatives, when these are the property of foreign states, are exempt.

*Residence Tax (Imposta di soggiorno) and Stamp Tax* on foreign bonds. Exemption is accorded.

*Local Rates (Tassa sul valore locativo).*—Consuls are automatically exempt, and instructions have been given to ensure exemption of foreign diplomats; this applies to the sites of foreign embassies and legations.

*Extraordinary Inheritance Tax.*—Diplomatic agents are only called upon to pay on lands and buildings and capital held in their private capacity.

*Registration Tax.*—Diplomatic and consular representatives are subject to payment of the tax on contracts concluded by them in Italy (except representatives of countries where reciprocal treatment is accorded to Italian representatives) relating to the acquisition of house or land property destined to become the site of foreign representation in Italy.

*Tax on Electricity, Gas, Light and Water.*—Requests for exemption have always been refused, largely in consideration of the fact that in most countries the supply of these commodities is in the hands of private enterprise.

All rules regarding privileges and immunities accorded to diplomatic agents are, by old international custom, strictly subject to condition of reciprocity.

## § 419.

## NETHERLANDS

*Customs, Excise and Statistical<sup>1</sup> Duties.*—Subject to reciprocal treatment, the following are exempt :

Diplomatic representatives of foreign countries and members of their diplomatic staffs. Exemption applies to articles imported at the time of arrival in the Netherlands as well as to goods imported later.

Similar treatment is accorded to representatives of the League of Nations (*e.g.* the Registrar of the Permanent Court of International Justice and his staff, if not of Dutch nationality) ; and to members of the Permanent Court of International Justice of foreign nationality.

Though heads of states and their suites, and foreigners of distinction, such as ministers of state, high officials, and members of temporary official missions, are not entitled to such treatment, the customs authorities receive instructions to afford every possible facility to them.

Similarly diplomatic couriers, who are entitled to exemption from examination of packages closed by official seals, are usually accorded exemption in respect of their other baggage as well.

The families of diplomatic representatives and of their diplomatic staffs are entitled to the same customs privileges as the heads of those families.

Furniture, flags, and stationery intended for the official use of legations are admitted free of import duty.

*Direct State Taxes.*—Heads of missions, members of their diplomatic and non-diplomatic staff, and servants residing in the houses of heads of missions are exempt from direct state taxes, subject to reciprocity, and provided they are of foreign nationality and do not exercise any business or trade in the Netherlands. In the cases of

<sup>1</sup> *I.e.* tax levied for the cost of keeping statistics.

income tax and capital tax there are certain exceptions, which may be summarised as profits arising from landed property and capital invested in business enterprises in the Netherlands.

*Motor Tax.*—Diplomatic, consular, and other representatives of foreign states, members of their staffs, and servants residing in the houses of such representatives, if of foreign nationality, are exempt from the payment of road tax for motor vehicles.

*Bicycle Tax.*—Diplomatic officers, members of their families, and the non-diplomatic staff of legations are exempt, provided they are of foreign nationality.

*Municipal Taxes.*—Heads of missions, and members of their diplomatic and non-diplomatic staffs, if of foreign nationality and not exercising any business or trade in the Netherlands, are exempt. Municipal dog-licences are granted free of charge to diplomats.

### § 420.

### SOVIET UNION

On the basis of the legislation of the U.S.S.R., diplomatic representatives and also all persons belonging to official diplomatic staffs on the territory of the U.S.S.R., who are foreign citizens, are exempt from all direct taxes, general state and local taxes, and also personal obligations either in kind or in money, on a basis of reciprocity.

Concerning the admission of packages accompanying foreign diplomatic and consular representatives and their employees, or addressed to them or to their premises :

1. Luggage belonging to diplomatic representatives accredited to the government of the U.S.S.R., and members of diplomatic missions of foreign governments in the territory of the U.S.S.R., which accompanies such persons as hand-luggage, or is in the luggage-van at the time of their passage through the customs establishments of the U.S.S.R., whether on arrival or departure, is, as a general rule, exempt from customs inspection.

Nevertheless in certain special cases the inspection of luggage of such persons may be allowed, as an extraordinary measure, on each occasion by the order of the Chief Directorate of Customs. If so desired by the persons interested, the inspection may be carried out at the Moscow customs.

2. Packages and luggage addressed to diplomatic representatives accredited to the government of the Soviet Union and not accompanied by them, or addressed to the missions, are subject to examination, but are exempt from the payment of customs duties and excise within the limits laid down in para. 4 of these regulations.

3. Packages and luggage which are being sent to the address of persons other than diplomatic representatives, who are members of diplomatic missions of foreign governments, are subject to customs inspection and the payment of customs duties, excise and other taxes on the basis of general tariff laws and regulations.

4. The amount of the customs duties or excise remitted in

respect of the packages and luggage referred to in para. 2 is fixed each year by a special decision of the Commissariat of Commerce. The admission of this property, in virtue of the above-mentioned exemption from customs and excise, is carried out by means of special booklets, in which are entered both the amounts of the taxes or excise which are remitted, together with the period of validity of the booklets.

(*Note.*—Packages and luggage which are admitted for diplomatic representatives without the payment of customs or excise are not subject to storage or poundage charges.)

5. The booklets are issued to diplomatic representatives by the Commissariat for Foreign Affairs ; a list of the books issued is communicated by the Protocol Department to the Chief Directorate of Customs at the People's Commissariat for Internal and External Trade. The booklets are valid within the limits of the periods indicated in them, without reference to the degree to which they have been utilised.

6. Stamps, seals, office stationery, official forms, signs and flags, which are essential for the official requirements of diplomatic representatives of foreign states, and also uniforms of diplomatic representatives, and of the members of diplomatic missions, are admitted free of duty over and above the limits laid down in para. 4 of these regulations.

7. Articles of the so-called " first installation " forwarded to the address of diplomatic missions and members of diplomatic missions on the first arrival of such persons in the U.S.S.R. for the fulfilment of their official duties, as for instance household furniture, cutlery and chinaware, table linen, etc., may be admitted duty free after inspection, though on each occasion with the special permission of the Chief Directorate of Customs.

8. Packages and luggage of diplomatic missions and members of diplomatic missions of foreign governments forwarded independently when the owners leave for abroad are subject to inspection at the nearest customs house. On final departure abroad of the above-mentioned persons, packages and luggage which are forwarded independently can be passed through the customs establishments of the Union free of taxes and other charges mentioned in the note to para. 4 above, but only within a period of six months from the day of the actual departure of such persons out of Soviet territory.

9. In order to obtain permission under Nos. 1, 2, 3 and 8 of these regulations for the export and import of the prohibited articles, diplomatic missions must request in each particular case, through the intermediary of the Commissariat for Foreign Affairs, the prior authorisation of the Chief Directorate of Customs.

10. If, when on the inspection of luggage carried out in virtue of para. 2 of the first section of these regulations, articles the import and export of which are forbidden, or articles which, although their importation is not forbidden, are discovered in a quantity exceeding

the personal needs of the diplomatic officer, the question of the admission of the articles, or of recovery in respect of them, will be settled in accordance with the existing laws and ordinances.

## § 421.

## SPAIN

In general, heads of missions are exempt from all taxation of whatever nature, except in respect of private property which they may happen to hold in Spain. They must, however, pay customs duty on their motor cars at the time of sale, if sold within three years.

As regards the treatment of officers other than heads of missions, the general practice is :

*Customs Duties.*—These are payable by all junior members of diplomatic staffs, except in the case of *première installation*. This phrase includes motor cars, which, on a reciprocal basis, are considered to form a *bonâ fide* part thereof, and are thus allowed to enter duty free, though duty must be paid if they are sold within three years. Motor cars imported subsequently are liable to pay duty in the ordinary way.

*Income Tax, Motor Taxation, Local Taxes and Municipal Rates.*—In respect of these, complete exemption is granted on a reciprocal basis.

But in the absence of reciprocal treatment, the above is subject to modification accordingly.

## § 422.

## SWITZERLAND

Practice is based on general principles of law, usages of international courtesy, and reciprocity.

*Customs Duties.*—Heads of missions are accorded free entry of goods for their personal use and that of their families. Counsellors, secretaries, and attachés, on *première installation* only, subject to an undertaking that the goods are for their personal use, and that if sold locally duties will be paid. This includes motor cars.

According to a circular of February 14, 1921, the personnel of missions are classified thus :

(1) The diplomatic personnel proper (*corps diplomatique sensu lato*) and the head of the chancery. As “*extraterritorial*,” these enjoy full diplomatic privileges and immunities, jurisdictional and fiscal.

(2) The rest of the official personnel, whether technical or manual (auxiliary), while subject to the local laws and jurisdiction as “*non-extraterritorial*,” are by courtesy exempt from taxes, whether direct and personal or sumptuary. This applies to such as are employed and paid by the state, and are in the exclusive service of the mission ; but not to the domestic personnel.

Exemption is accorded on a reciprocal basis from direct personal taxes, viz. : the federal extraordinary and temporary war tax, the only tax levied by the Confederation ; and taxes upon capital and income, levied by the Cantons and Communes. No exemption

is accorded from tax on real property, or from taxes for public services rendered. But, as an exception, Article 7 of the ordinance of December 6, 1920, provides that, on a reciprocal basis, foreign states and heads of missions are exempt from tax on real property, if the latter is exclusively devoted to the purposes of the mission.

*Motor Tax.*—Exemption is accorded, and by courtesy the Canton of Berne issues *gratis* local permits.

*Dog Tax.*—Exemption is accorded.

*Stamp Tax* on coupons, being an indirect tax, is leviable.

## § 423.

## UNITED STATES

*Customs Duties.*—Articles 404 and 405 of the United States Customs Regulations, 1923, provide as follows<sup>1</sup> :

Article 404. *Baggage.*—The privilege of free entry is extended to the baggage and other effects of the following officials, their families, suites, and servants :

Foreign ambassadors, ministers, *chargés d'affaires*.

Secretaries and naval, military and other attachés at embassies and legations, high commissioners and consular officers accredited to this government, or *en route* to and from other countries to which accredited, and whose governments grant reciprocal facilities to American officials of like grade accredited thereto. . . . Other high officials of this and foreign governments, and such distinguished foreign visitors as may be designated by the Department of State.

Applications should be made to the Department of State for the free entry of the baggage of, and extension of courtesy to, all foreign ambassadors and other foreign officers. . . . In the absence of special authorisation from the Department prior to the arrival of foreign diplomatic and consular officers, collectors of customs may accord the privileges of this article to them upon presentation of their credentials, or by otherwise establishing their identity. Collectors will keep a record of the privileges granted, whether the subject of instructions from the Department or not, containing the name of the person to whom granted, his rank or designation, the name of the vessel and date of arrival. If by accident or unavoidable delay in shipment the baggage or other effects of a person of any of the classes mentioned in this article shall arrive after him, the same may be passed free of duty upon his declaration.

Article 405. *Imported articles.*—Members and attachés of foreign embassies and legations<sup>2</sup> may receive articles imported for their personal or family use free of duty upon the Department's instructions in each instance, which will be issued only upon the request of the Department of State.

Packages bearing the official seal of a foreign government,

<sup>1</sup> Only nationals of the country they represent are entitled to the benefit.

<sup>2</sup> May be extended by reciprocal agreement to consular officers and non-commissioned personnel of embassies and legations.

containing only official communications, documents, and office equipment, when accompanied by a certificate to that effect under such seal, may be admitted without customs examination. Costumes, regalia, and other articles for the official use of diplomatic or consular officers of a foreign government will be admitted free of duty.<sup>1</sup>

Collectors will take charge of all packages addressed to diplomatic officers of foreign nations which arrive in advance of the receipt of instructions for free duty. Notification of such arrivals should be sent to the Secretary of the Treasury.

(High Commissioners and trade commissioners (or trade representatives) whose status is similar to consular officers, are accorded the same treatment as consular officers, with respect to their baggage and effects, and articles imported for official use).

*Federal Income Tax.*—Ambassadors and ministers accredited to the United States and the members of their households (including secretaries, attachés, and servants) who are not citizens of the United States, are exempt from payment of Federal Income Tax upon their salaries, fees or wages. The income from investments in the United States in bonds and stocks and from interest on bank balances received by ambassadors and ministers accredited to the United States, who are not citizens of the United States, is exempt from tax, but income from any business carried on by them in the United States is taxable. In addition, such ambassadors and ministers, for the purposes of the tax, are treated as non-resident aliens and are therefore exempt from income tax with respect to income from sources without the United States. These provisions are also applicable to the wives and minor children of foreign ambassadors and ministers and the members of their households, including secretaries, attachés and servants.

*Federal Miscellaneous Taxes.*—Ambassadors and ministers of foreign governments accredited to the United States are exempt from : the tax upon passage tickets ; the tax upon dues, membership fees, or initiation fees to any social, athletic or sporting organisation ; the tax upon admission to places of public entertainment ; and the tax upon tobacco, snuff, cigars or cigarettes imported into the United States, in any case where customs regulations authorise free entry of such articles. In the latter case the requirements of the regulations in respect to size of packages of tobacco, snuff, cigars or cigarettes are waived. The above exemptions are also applicable to the members of the families and households of the ambassadors and ministers.

No exemption from Federal estate tax is allowed by reason of the fact that the decedent was in the diplomatic service of a foreign government. Decedents who were in the diplomatic service of foreign governments, however, are treated as non-residents, and the liability of their estates for the tax determined accordingly. In the case of a non-resident decedent the net estate, which is the subject of the tax, is that part of the gross estate which is situate in the

<sup>1</sup> Based on reciprocity.

United States less certain deductions, but no specific exemption is allowed, as in the case of a resident decedent.

The taxes referred to under this heading include substantially all of the Federal excise taxes which would be likely to have any direct appreciable effect upon foreign diplomatic representatives.

*Local Taxes in the District of Columbia.*—Ambassadors and ministers accredited to the United States and the members of their families and households are exempt in the district of Columbia from the tax upon personal property, but are not exempt from the tax upon real property.

While no exemption is available with respect to the tax on gasoline, upon proper certification by the State Department, ambassadors and ministers accredited to the United States are exempt from the payment of fees covering the issuance of licence plates for automobiles.

## CHAPTER XIX

### POSITION OF DIPLOMATIC AGENT IN REGARD TO THIRD STATES

§ 424. IN proceeding to his post, or in returning to report to his government, a diplomatic agent often has to traverse the territory of a third state, and questions have from time to time arisen as to his position therein.

#### *Passage in Time of Peace*

§ 425. Schmelzing laid it down that :

Envoys enjoy the totality of diplomatic privileges only in the territory of the state to which they are sent and to which they are accredited. They cannot consequently claim the privileges of inviolability in a third country which they touch on their journey through, in going or returning, or in which they stay for a lengthened period, unless they deliver credentials to the sovereign. The diplomatist is only a private person when he traverses a third state, and as such he is not entitled to claim diplomatic privileges for himself, his suite or his property.

It is, however, the custom that in time of peace foreign envoys traverse the territory of a third state freely and without hindrance, and may pass a time there, and that certain privileges and marks of respect are accorded to them similar to those enjoyed by regularly accredited diplomatists. This political courtesy rests upon no legal obligation, and, consequently, in case of dispute with the state from which it is claimed, reliance will be had on the essential difference between an envoy formally accredited, and one who is not accredited.<sup>1</sup>

§ 426. Rivier, however, was of opinion that

the agent passing through a third state when going to or returning from his post is more than a mere distinguished traveller. He is exercising his own state's right of legation in passing through under the circumstances indicated. By hindering or molesting him you interfere with the rights of both states. Consequently, as soon as his character is revealed the agent becomes entitled to claim for

<sup>1</sup> ii. 222.

himself and his suite, in all matters involving the rights of those two states, respect and complete security, *i.e.* inviolability. There is, however, no need to regard him as entitled to extritoriality. If he stays in a third state, certain favours, such as the exemption from the payment of import duties and other taxes, may be accorded to him as an act of courtesy, without his having any right to demand it. The passage or stay of the agent will be allowed only if it is harmless, of which the state in whose territory he is can alone be the judge. That state will adopt such precautions as it may deem to be suitable. If passage is accorded, the state can impose a limit on its duration, fix the route to be taken, and prohibit the agent from stopping *en route*. . . . It is assumed that the agent is travelling or sojourning in the character of a public personage. If he is there solely for his own pleasure, or in pursuit of some merely private object, he is merely a distinguished personage, neither more nor less.<sup>1</sup>

§ 427. Halleck observes :

“He has a right of innocent passage through the dominions of all states friendly to his own country, and to the honours and protection which nations reciprocally owe to each other’s diplomatic agents, according to the dignity of their rank and official character. If the state through which he proposes to pass has just reason to suspect his object to be unfriendly, or to apprehend that he will abuse this right by inciting its people to insurrection, furnishing intelligence to its enemies, or plotting against the safety of the government, it may very properly, and without just offence, refuse such innocent passage. But if an innocent passage is granted (and it is always presumed to be by a friendly Power, unless specially denied) he is entitled to respect and protection, and any insult or injury to him is regarded as an insult or injury both to the state which sends him and that to which he is sent.”<sup>2</sup>

§ 428. At the present day it is so much to the interest of all nations that their diplomatic representatives should be allowed to pass freely and without hindrance through such countries as they may have to traverse in order to reach, or to return from, their posts, that it is usual to afford all reasonable facilities and courtesies for the purpose. The only precautions to be recommended are that the agent should provide himself with a passport, duly *visé* where necessary, in which his official character is fully detailed, and obtain from the diplomatic agent of the third state in his own country a *laisser-passer* to enable his baggage to pass through the customs of that state with the usual respect. When returning from the capital to which he is accredited, he will usually be able to obtain the same privilege from his colleague there.

<sup>1</sup> *Principes du Droit des Gens*, i. 508.

<sup>2</sup> *International Law*, i. 389.

§ 429. But as regards the immunity of the diplomatic agent from the jurisdiction of a third state, writers differ, and it cannot be said that any well-established rule of international law exists.

§ 430. Recently Baron Heyking writes :

“ Le but de l’extraterritorialité est de débarrasser les fonctions diplomatiques de tous les obstacles de la part du pouvoir de l’État étranger. Ce but ne peut être rempli que dans l’État qui reçoit l’ambassadeur et où les fonctions diplomatiques doivent être exercées. Il est clair par conséquent que les privilèges d’extraterritorialité n’ont pas de raison d’être dans les États que l’ambassadeur ne fait que traverser. Ils ne peuvent être réclamés par lui que dans le cas où une loi spéciale existerait à ce sujet, loi établie par déférence, *motu proprio*, comme, par exemple, l’édit des Pays-Bas du 9 septembre 1679. En l’absence d’une disposition spéciale de ce genre, l’État qui sert de passage jouit à l’égard de l’ambassadeur de tous les droits qu’il peut avoir contre une personne privée ; il peut même, lorsqu’il il le soupçonne dangereux ou suspect, lui interdire le séjour dans les limites de ses frontières.”<sup>1</sup>

§ 431. And M. Deák :

“ Bien que le droit international n’impose pas aux États l’obligation d’accorder l’immunité diplomatique aux personnes qui traversent leur territoire, on peut considérer que c’est une coutume généralement admise de leur accorder une protection spéciale. Mais il n’existe pas de règles définies, et moins encore d’opinion unanime en droit international sur cette question, qui est devenue plus importante depuis l’établissement de la Société des Nations.”<sup>2</sup>

§ 432. As shown too in the foregoing quotations, distinctions are drawn by writers between the case where the agent passes through the third country on his way to or from his post, and those in which he prolongs his stay, or is there merely for his own pleasure. In the latter case it is not apparent that he has immunity.

✓ Nevertheless, the Pan-American Convention of February 20, 1928, the preamble of which says that it incorporates the principles generally accepted by all nations, lays down for the signatory states the following rules : “ Article 23.—Persons belonging to the mission shall also enjoy the same immunities and prerogatives<sup>3</sup> in the states which they cross to arrive at their post or to return to their own country, or in a state where they may casually be during the exercise of their functions and to whose government they have made known their position.”

<sup>1</sup> *L’Extraterritorialité*, Cours de La Haye (1925), ii. 266.

<sup>2</sup> *Classification, etc., des Agents Diplomatiques*, Rev. de Dr. Int. (1928), 558.

<sup>3</sup> *Inter alia*, exemption from all civil and criminal jurisdiction (Art. 19).

§ 433. As regards other aspects, Halsbury's "Laws of England" states :

"Whether process issued by the courts of this country can be served in a foreign country upon a foreign minister accredited to and received at the court of such foreign country must be taken to be doubtful."<sup>1</sup>

§ 434. In France it has been held that the local courts have jurisdiction in the case of a foreign diplomatic officer who is accredited to another state in respect of an action against him relating to the building of a chalet within French territory<sup>2</sup>; and in respect of proceedings in divorce instituted against him by his wife in France.<sup>3</sup> (See also § 836.)

§ 435. Certain incidents and cases are set out below, dating from ancient times up to the present.

In 1541 *Rincon* and *Fregoso*, French ambassadors to Turkey and Venice, while on their journey down the River Po, were seized by the Governor of Milan and murdered, and their papers seized.<sup>4</sup>

In 1572 *du Cros*, French envoy to Scotland, was arrested in England, at a time when the passage of Frenchmen through England to Scotland was forbidden. It was contended that he should have asked for a passport.<sup>5</sup>

On September 9, 1679, an ordinance of the States-General accorded inviolability to diplomatic agents passing through the United Provinces, just as if they were accredited there.

In 1793 the French revolutionary government sent *Marat* and *Semonville* on a mission to Switzerland. In passing through the territory of the Grisons they were arrested by order of the Austrian Government, stripped of their property, and confined in the citadel of Mantua.<sup>6</sup>

(1) In 1839, in the case *Holbrook v. Henderson*, before the Superior Court of New York, the minister of the republic of Texas in France and England, while returning to his own country, was arrested in the United States for debt. The court held that the privilege of an ambassador extended to immunity against all civil suits sought to be instituted against him in the courts of the country to which he was accredited as well as in those of a friendly country through which he was passing on the way to his post, and that he was entitled to this as representative of his sovereign, and also because it was necessary for the free and unimpeded exercise of his diplomatic duties.<sup>7</sup>

<sup>1</sup> vi. 431.

<sup>2</sup> *Leon c. Diaz*, Clunet (1892), 1137; Hurst, *Les Immunités Diplomatiques*, Cours de La Haye (1926), ii. 228.

<sup>3</sup> *Stoiesco c. Stoiesco*, Clunet (1918), 656; Hurst, *op. cit.*, ii. 229.

<sup>4</sup> Flassan, iii. 9.

<sup>5</sup> Ward, *Law of Nations*, 560.

<sup>6</sup> Sorel, *L'Europe et la Révolution Française*, iii. 431.

<sup>7</sup> 4 N. Y. Super. Ct. 619; Hudson, *Cases on International Law*, 854.

(2) In 1840 *Mr. Beylen*, United States consul, who was employed by his government as a courier to Genoa, was, while crossing France, cited for recovery of debts. The Civil Tribunal of the Seine held that he was exempt from French jurisdiction under the decree 13 ventôse, an II, which, in consecrating the inviolability of diplomatic agents, made no distinction between those accredited to France and those traversing France in order to reach their posts elsewhere.<sup>1</sup>

(3) In 1854 the French Government refused to *Mr. Soulé*, United States minister at Madrid (of French origin, but naturalised in the United States, and said to have been "of a fiery temperament") permission to stay in France on his way to his post, on the ground that his antecedents had attracted the attention of the authorities charged with public order; they had no objection to his merely passing through, but as he had not been authorised to represent his adopted country in his native land, he was for the French Government merely a private person, and as such subject to the ordinary law.<sup>2</sup>

(4) In 1888, in the case *New Chile Gold Mining Co. v. Blanco and another*, in the English courts, an action was begun against M. Blanco, Venezuelan minister at Paris, and an order for the service of the writ out of the jurisdiction having been made, an application was made to the Court of Queen's Bench to set the order aside. In the result, and although the general question was not decided, the court set aside the order, and held that as a matter of discretion it would not allow service of a writ out of England on the minister of a friendly Power accredited to a foreign state.<sup>3</sup>

(5) In 1889, in the case *Wilson v. Blanco* in the United States, M. Blanco, Venezuelan minister at Paris, was served, while passing through, on his way to his post, with process in connection with a civil claim against him, and in default of appearance judgment was given against him for the sum of \$2,194,535.34. On a motion to set aside the judgment and vacate the summons, the Superior Court of New York, in referring to the case of *Holbrook v. Henderson* in the same court, and to the views of numerous jurists of recognised authority, as set forth in Wheaton, granted the application to vacate the judgment and set aside the summons upon him.<sup>4</sup>

(6) In 1900 the French Minister for Foreign Affairs, in answer to an enquiry addressed to him by the Spanish ambassador, concerning the *Duc de Veragua*, said: "L'agent diplomatique, ou même la personne chargée temporairement d'une mission diplomatique qui traverse la territoire française pour accomplir sa mission à l'étranger ou retourne pour rendre compte à son gouvernement, doit être assimilé à l'agent diplomatique accrédité, et par suite doit être exempté de la juridiction locale."<sup>5</sup>

<sup>1</sup> Hurst, *op. cit.*, ii. 223.

<sup>2</sup> de Martens-Geffken, i. 119; Foster, *Practice of Diplomacy*, 53.

<sup>3</sup> 4 T. L. R. (1888), 346.

<sup>4</sup> Scott, *Cases on International Law*, 293

<sup>5</sup> Clunet (1901), 342; Hurst, *op. cit.*, ii. 225.

(7) In 1910, in the case *Sickles v. Sickles*, at Paris, concerning divorce proceedings instituted against the secretary of the United States legation at Brussels, the Civil Tribunal of the Seine declared itself incompetent, as the defendant had never been domiciled in France. But on the general question of his liability to the local jurisdiction in the circumstances of his stay in Paris for non-official reasons, they observed: "Que si ces prérogatives (immunités diplomatiques) doivent être étendues au cas où ces agents traversent un autre pays pour l'accomplissement de leur mission, ou après son exécution, ces envoyés ne peuvent réclamer les mêmes immunités lorsqu'ils se trouvent sur un territoire étranger sans être appelés pour des affaires se rattachant à leurs fonctions; que les raisons supérieures et d'ordre public qui justifient ces immunités diplomatiques ne se rencontrent pas dans cette dernière hypothèse."<sup>1</sup>

(8) In 1924, in the case *Carbone v. Carbone*, in the United States, an action was brought against an attaché of the legation of Panama in Italy in respect of proceedings in divorce. The court held that there was a marked difference between immunity from civil proceedings and immunity from arrest. A country which a diplomatic agent crosses in going to or coming from the country to which he is accredited, owes to him only that it shall not hinder the fulfilment of his mission by restraining his personal liberty. The warrant of arrest against him was therefore annulled, but not the writ to enter appearance.<sup>2</sup>

(9) In 1926 *Madame Kollontai*, who had been appointed by the Soviet Government as minister at Mexico, was refused permission to pass through the United States (which was not in diplomatic relations with that government) on her way to her post.

§ 436. The treaty concluded between Italy and the Holy See on February 11, 1929, provides as follows:

Article 12.—Italy recognises the right of the Holy See to active and passive legation in accordance with the general rules of international law. Envoys of foreign governments to the Holy See shall continue to enjoy in the Kingdom all the privileges and immunities appertaining to diplomatic agents in virtue of international law, and their headquarters may remain in Italian territory and shall enjoy all the immunities due to them in accordance with international law, even if the states to which they belong maintain no diplomatic relations with Italy. It is understood that Italy undertakes always and in every case to leave free the correspondence from all states, including belligerents, to the Holy See, and *vice versa*. . . . In virtue of the sovereignty recognised, and without prejudice to the provisions of Article 19 below, diplomatists of the Supreme Pontiff shall enjoy in Italian territory, even in time of war, the treatment due to diplomatists and carriers of despatches of other

<sup>1</sup> Clunet (1910), 529.

<sup>2</sup> 206 N. Y. Super. Ct., 40 (1924); Deák, *op. cit.*, 530.

foreign governments, in accordance with the rules of international law.

Article 19.—Diplomatic officers and envoys of the Holy See, diplomatic officers and envoys of foreign governments accredited to the Holy See . . . possessing passports issued by their state of origin and *visés* by Papal representatives abroad, shall be admitted without further formality to the City across Italian territory. The same shall apply to the above-mentioned persons, who, being furnished with regular Papal passports, are proceeding abroad from the Vatican City.

### *Passage in Time of War*

§ 437. *When the state by which the agent is accredited is at war with the third state.*

A Power which during war arrests the envoy of a hostile state who is found within its territory, and treats him as a prisoner of war, commits thereby no breach of international law.<sup>1</sup> As Rivier says: "If the two states are at war, the agent may in default of a safe-conduct be made prisoner."<sup>2</sup> If he travels on board a neutral ship, the vessel may be seized and brought in for adjudication in the prize court.<sup>3</sup>

(1) In 1744 France declared war against the King of England, Elector of Hanover, and Hanover was consequently enemy territory for France. *Marshal Belleisle*, then at Frankfort as French ambassador to the Emperor Charles VII (Elector of Bavaria), was ordered to proceed to Berlin as minister. In crossing Hanover, he and his brother were made prisoners of war. Orders were sent from London to remove them to England, where they were retained for several months, until released conditionally.<sup>4</sup>

(2) In 1744 *Holdernes*, ambassador of Great Britain to Venice, was arrested near Nuremberg by order of the Emperor Charles VII. Since, as late as January 1745, the latter had a minister in London, there was no justification for this arrest, and on learning of it, the Bavarian commander-in-chief ordered his release and preferred an apology.<sup>5</sup>

(3) In 1915 *Dr. C. Dumba*, Austrian ambassador at Washington, on his recall, and *Captains Boy-Ed* and *Von Papen*, German naval and military attachés, on their recall, owing to the dissatisfaction of the United States Government with their proceedings, were, at the request of that government, granted safe-conducts by the Allied Powers for their return journeys to Europe.

(4) In 1917, on the entry of the United States into the war, *Count Bernstorff*, German ambassador at Washington, was, at the request of the United States Government, granted safe-conduct by the Allied Powers to enable him to return to Germany.

<sup>1</sup> Hall, 365.

<sup>2</sup> *Op. cit.*, 509.

<sup>3</sup> Hurst, *op. cit.*, ii. 235.

<sup>4</sup> Ch. de Martens, *Causes célèbres, etc.*, i. 285.

<sup>5</sup> *Ibid.*, 300 n.

(5) In 1917 *Herr von Heinrichs*, former secretary to the German embassy at Madrid, while on his way to Mexico to take up another appointment, was made prisoner on landing in Cuba, then at war with Germany.<sup>1</sup>

(6) In 1918 *Captain von Krohn*, naval attaché to the German embassy at Madrid, was, at the request of the Spanish Government, granted safe-conduct by the French Government, to permit of his return to Germany through France, a prescribed route being enjoined.<sup>2</sup>

§ 438. When Italy declared war against Austria-Hungary in 1915, the diplomatic representatives of the Central Powers accredited to the Pope, who resided outside the exempted buildings occupied by His Holiness, avoided all difficulty by retiring beyond the Italian frontier. The Law of Guarantees of May 13, 1871 (now abrogated by the Treaty of February 11, 1929), however, provided (Article 11) as follows<sup>3</sup> :

The envoys of foreign governments accredited to His Holiness will enjoy in the Kingdom all the prerogatives and immunities appertaining to diplomatic agents, in accordance with international law.

The penal sanction for offences against such representatives shall be the same as that which would be applied in respect of foreign envoys accredited to the Italian Government.

The envoys of His Holiness to foreign governments shall possess within the territory of the Kingdom the usual prerogatives and immunities, in accordance with the same law, both in going to their posts and in returning.<sup>4</sup>

§ 439. *When the state to which the agent is accredited is at war with the third state.*

An old case of 1702 is recorded, when, during the war between Sweden and Poland, the *Marquis de Bonnac*, French envoy to Sweden, was arrested in passing through Polish territory. In reply to the serious representations of the French Government, it was said in extenuation that he should have provided himself with a passport.<sup>5</sup>

§ 440. If the state to which the agent is accredited is invaded by the armed forces of the third state, various questions may arise.

(a) If the government of the invaded state is transferred from the capital to a town in the country (as when in 1914 the French Government transferred its seat from Paris to Bordeaux), the question whether the diplomatic agent should also transfer his residence to that town, or continue to reside

<sup>1</sup> Oppenheim, i. § 398.

<sup>2</sup> Genet, *Traité de Diplomatie*, etc., i. 596.

<sup>3</sup> For certain provisions of the treaty of February 11, 1929, between Italy and the Holy See, see § 436.

<sup>4</sup> de Castro y Casaleiz, ii. 456.

<sup>5</sup> Flassan, iv. 239.

at the capital, is one for himself and his government to decide.<sup>1</sup>

(b) If the state to which the agent is accredited is occupied by the military forces of the third state, the obligation of withdrawal naturally falls upon diplomatic agents of states who may be in alliance with the former. The representatives of neutral states might also be required to withdraw, unless charged by their governments with special functions with the consent of the occupying state.<sup>2</sup>

In 1914, on the occupation of Luxemburg by German forces, the German Government insisted on the withdrawal of the French and Belgian ministers accredited to Luxemburg.<sup>3</sup>

In 1914, on the occupation of the greater part of Belgium by German forces, the Belgian Government transferred its seat to French territory, whither most of the diplomatic agents accredited to Belgium followed it. The Spanish and United States ministers, being charged with special functions, were, with some others, allowed by the German Government to remain in Brussels, in the enjoyment of diplomatic privilege. The United States minister withdrew shortly before the entry of the United States into the war.<sup>4</sup>

In 1916, on the invasion of Roumania, and its occupation in great part by the Central Powers, the latter insisted on the representatives of neutral states leaving Bucharest, and on January 13, 1917, they left on a special train placed at their disposal for the purpose.<sup>5</sup>

(c) *If the seat of government is besieged by the military forces of the third state.*

*Siege of Cadiz, 1823.*—During the French invasion of Spain, the Cortes retired to Cadiz, and the King went with them. The French forces laid siege to the city. The instructions to the British minister, as given in a despatch from Canning of September 18, 1823, were<sup>6</sup> :

“You have judged wisely in declining their (the Spanish Government’s) solicitation to repair under the present circumstances to Cadiz. It is obvious that one object at least (if not the single object) of that solicitation is to produce a state of things fertile in sources of misunderstanding with the blockading belligerent ; and of questions which, as it would be difficult to solve, it would be most inconvenient unnecessarily to stir : questions, of which the usually admitted authorities in matters of international law have not even contemplated the occurrence ; and for the decision of which history affords no practical example. Who has laid down, and, in the absence of authority and precedent, who shall lay down what are the rights and privileges of the minister of a neutral Power

<sup>1</sup> Hurst, *op. cit.*, 233.

<sup>2</sup> *Ibid.*, 232.

<sup>3</sup> *Ibid.*, 231.

<sup>4</sup> *Ibid.*, 232.

<sup>5</sup> *Ibid.*, 232.

<sup>6</sup> Quoted in Stapleton’s *Political Life of the Rt. Hon. George Canning*, i. 465.

in a town besieged and blockaded by sea and land? Has he a right of unlimited communication with his Court? Is he to direct the vessel which he may employ to submit to search, or to resist it in the execution of this object? These and a hundred other questions of the like difficulty must arise in a situation so new and anomalous; and questions between nations which are not referable to preconcerted agreements, or to settled principles and acknowledged law, what power is to decide but the sword? If we had been disposed to go to war with France, and in behalf of Spain, we would have done so openly, and either on the merits of the case, or in vindication of some intelligible interest. But after professing and maintaining a perfect and scrupulous neutrality throughout the contest, to be betrayed at this stage of it into hostilities with France through an uncalled for and unprofitable discussion upon abstract points of international jurisprudence, would be a weakness unworthy of any government, and such as must make us the laughing stock of Europe. Your presence at Gibraltar places you quite as much within the reach of the Spanish Government for all purpose of active friendship and utility (as indeed the late transaction has shown) as if you were shut up within the walls of Cadiz and exposed (gratuitously as must be admitted) to the dangers and sufferings of a siege."

*Siege of Paris, 1870-1.*—During the siege of Paris by the German forces certain diplomatic agents remained in the city. Among these were the nuncio, and the United States, Swiss, Swedish, Danish, Belgian and Netherlands ministers. Having requested permission to send out a diplomatic courier through the German lines, they were informed that letters would be allowed to pass if unclosed, provided they contained nothing objectionable from a military point of view. On a further representation that the condition of sending open despatches would render official relations with their governments impossible, Count Bismarck's reply, addressed to the nuncio, observed, "Il a été créé à Paris un état de choses auquel l'histoire moderne, sous le point de vue du droit international, n'offre aucune analogie précise. Un gouvernement en guerre avec une Puissance qui ne l'a pas encore reconnu, s'est enfermé dans une forteresse assiégée, et s'y trouve entouré d'une partie des diplomates qui étaient accrédités auprès du gouvernement à la place duquel s'est mis le Gouvernement de la Défense Nationale. En face d'une situation aussi irrégulière, il sera difficile d'établir sur la base du droit des gens des règles exemptes de controverse sous tous les points de vue."

The United States minister alone, who had charge of the protection of German nationals, was on this ground allowed the privilege of despatching and receiving closed bags once a week.

The United States Secretary of State<sup>1</sup> appears in the meantime to have claimed for the representatives of neutral states in Paris

<sup>1</sup> *Foreign Relations of the United States* (1871).

the right of free intercourse with their governments on the ground that such intercourse is in itself one of the privileges of envoys. Count Bismarck replied :

“The right of unhindered written intercourse between a government and its diplomatic representative, especially so far as concerns the government to which he is accredited, is in itself undisputed. But this right may come in conflict with rights which of themselves are also beyond dispute, as, for instance, in the case where a state, to guard against contagious disease, subjects travellers and papers to a quarantine. So too in war. The universal and imperative right of self-protection, of which war is itself the expression, may come in conflict with the diplomatic privileges which, just because privileges, are, in doubtful case, subject not to an enlarging, but to a contracting interpretation. . . . If the writers on public law concede to the diplomatic representatives of neutral states rights as against a belligerent Power, they do so only while, at the same time, coupling therewith the right to regulate the correspondence of such persons with a besieged town, according to military exigencies. Vattel says :

“ ‘ Elle (la guerre) permet d’ôter à l’ennemi toutes ses ressources, d’empêcher qu’il ne puisse envoyer ses ministres pour solliciter des secours. Il est même des occasions où l’on peut refuser le passage aux ministres des nations neutres qui voudraient aller chez l’ennemi. On n’est point obligé de souffrir qu’ils lui portent peut-être des avis salutaires, qu’ils aillent concerter avec lui les moyens de l’assister, etc. Cela ne souffre nul doute, par exemple, dans le cas d’une ville assiégée. *Aucun droit ne peut autoriser le ministre d’une puissance neutre ni qui que ce soit à y entrer malgré l’assiégeant*, mais pour ne point offenser les souverains, il faut leur donner de bonnes raisons du refus que l’on fait de laisser passer leurs ministres, et ils doivent s’en contenter s’ils prétendent demeurer neutres.’

“What is true of ministers will be all the more so of messengers and despatches. . . . The military necessity of cutting off a besieged town from outside intelligence appears a sufficient ground for subjecting to control, from a military point of view, the correspondence of diplomatic persons remaining in the town in its passage through territory occupied by the besiegers, and temporarily subject to their war sovereignty. It is not perceived that these persons are thereby treated as enemies, nor that they are thereby prevented from continuing neutral, or that wars are thereby indefinitely prolonged. On the contrary, the end of a war is all the sooner to be expected the more strictly the isolation of the hostile capital is carried out.”<sup>1</sup>

### *In General*

§ 441. The diplomatic agent accredited to a state, and in the absence of a mission or permission of his government, is

<sup>1</sup> Translation from the German.

in no way authorised to interpose in the differences which that state may have with another. If he interferes, the state to which he is accredited, or the other, or both, may complain to his own government. Either government entitled to complain may take such measures as it may judge to be appropriate, within the limits imposed by diplomatic privileges and immunities.<sup>1</sup>

In 1733 the *Marquis de Monti*, French envoy in Poland, took an active part, after the death of Augustus II, in supporting the election of Leczinski, and when the latter was driven from Warsaw by Russian and Saxon troops, followed him to Danzig, which was besieged, whereupon Monti surrendered to the Russian commander. To intercessions made on his behalf by France, Great Britain and Holland, the Russian reply was that only those ministers who do not transgress the limits of their functions can claim inviolability, and that only at the hands of the court to which they are accredited, and where they have been received and recognised as ministers. Monti had taken part in hostilities against the Russian forces ; his powers expired with the death of Augustus II, and so it was doubtful if he was entitled to be regarded as an ambassador after that event ; and, lastly, he had surrendered to the Russian commander, ready, as he said, to undergo all the misfortunes that might await him.<sup>2</sup>

In 1746 *Van Hoey*, envoy of the United Provinces at Paris, wrote to the Duke of Newcastle, then Secretary of State, after the battle of Culloden, asking that the Pretender's life should be spared if he was captured. This interference was much resented by the British Government, who complained to the States-General, demanding public satisfaction proportioned to the scandal caused by this proceeding to every friend of the honour, religion and liberty of the two Powers. The States-General administered a severe rebuke to Van Hoey, whom they ordered to write a polite and proper letter to the Duke of Newcastle, to acknowledge his own imprudence and the fault of which he had been guilty, and to promise to conduct himself more prudently for the future.<sup>3</sup>

<sup>1</sup> Rivier, *op. cit.*, ii. 511.

<sup>2</sup> Ch. de Martens, *op. cit.*, i. 210 ; Flassan, v. 72.

<sup>3</sup> Rivier, *op. cit.*, i. 512 ; Ch. de Martens, *op. cit.*, i. 312-25.

## CHAPTER XX

### THE DIPLOMATIC BODY

§ 442. THE Diplomatic Body comprises all the heads of missions, counsellors, secretaries and *attachés*, both paid and honorary, including military, naval, air and commercial *attachés*, chaplains and all other members who are on the diplomatic establishment of their respective countries. In Oriental countries many embassies and legations have *corps* of student interpreters (*interprètes élèves*), who are destined to be attached to the consular service when they have completed their studies. Whether these are to be included in the diplomatic body depends on the decision of the head of the mission concerned. At many capitals a list of the diplomatic body, compiled from lists furnished by each mission, is published from time to time. This generally includes the wives and children of the members of the missions.

§ 443. The *doyen* is the senior diplomatic representative of the highest category. His functions are of a limited character in most countries, and are chiefly of a ceremonial description. He is the mouthpiece of his colleagues on public occasions. He is the defender of the privileges and immunities of the diplomatic body from injuries or encroachments on the part of the government to which they are accredited. He is sometimes used as a channel for communication on ceremonial matters to the other heads of missions. Whatever records belong to the body as a whole are in his keeping. In some Oriental countries he may have more important duties to perform, as the channel through which joint representations regarding the treaty rights of foreigners in general are forwarded to the government. But he is in no case entitled to write or speak on behalf of his colleagues without having previously consulted them and obtained their approval of the step which it is proposed to take, and of the wording of any written or spoken representations on their behalf. No head of a mission will take part with his colleagues in a joint representation to the government of the country without

special authorisation from home, or accept a summons from the *doyen* to attend a meeting for the discussion of international matters unless he has received instructions to take joint action. At Washington such joint *démarches* of the diplomatic body have been generally declined by the Department of State ; an apparent exception occurred just before the outbreak of the war with Spain in 1898, when the European ambassadors were received by the President to make a joint representation in favour of peace.<sup>1</sup>

§ 444. The wife of the senior diplomatic representative of the highest category is called the *doyenne*. Her functions are limited to presenting at court ladies of the diplomatic body who have no one else to perform this office for them, *i.e.* if the head of the mission to which their husbands belong is unmarried.

§ 445. *Precedence among Heads of Missions.* In each category of diplomatic agents seniority depends on the date of official notification of arrival at the capital. This is the rule laid down in the *Règlement de Vienne* (§ 277). Some authors say that it depends on the date of the presentation of credentials.<sup>2</sup>

§ 446. Owing to the necessity of obtaining new credentials on the occasion of the death of either the accrediting sovereign or of the sovereign to whom the head of a mission is accredited, differences of opinion sometimes arose as to the necessity of a change of precedence among diplomatists, consequent on the difference of date on which the new credentials came into their hands, which, of course, might affect the order in which they were enabled to give official notification to the minister for foreign affairs. In March 1818 a controversy occurred at Copenhagen in the following circumstances : The envoy of a certain Power was the *doyen* of the diplomatic body at the Danish court. In consequence of changes at his own court, he received new credentials. Some of his colleagues maintained that he had thereby lost his seniority and must take rank after the others. The majority, however, took the opposite view.<sup>3</sup> In 1830 it was agreed among the heads of missions at Paris that, notwithstanding the date of delivery of their new credentials, they should continue to rank among themselves as before. The same arrangement was maintained in 1848, on the establishment of the second Republic, and in 1852, on the assumption of the title of Emperor by Prince Louis Napoleon. Similarly in Belgium, on the accession of

<sup>1</sup> Foster, *Practice of Diplomacy*, 124.

<sup>2</sup> *Ibid.*, 70 ; de Martens-Geffken, i. 53 ; García de la Vega, 209, 422.

<sup>3</sup> Schmelzing, ii. 128.

King Leopold II, in consequence of the death of Leopold I on December 10, 1865 ; and the Belgian diplomatic representatives in foreign countries also preserved their former relative seniority.<sup>1</sup> At the accession of King Alfonso of Spain, in 1875, the British minister had been *doyen*, but the ministers of Portugal and Russia, having presented their new credentials before he did, claimed precedence. After much discussion it was decided that the previous order of precedence should prevail.<sup>2</sup>

§ 447. It seems obvious that whatever arrangements the heads of missions may make among themselves, these cannot affect the rules of precedence at court which are adopted by the sovereign to whom they are accredited, or, in the case of republics, by those similarly adopted. Where there is any doubt as to the rules of precedence, the regulations of the particular court or state are decisive on the point. And while in some places it is held that the date of presentation of credentials regulates the rank in each category, this cannot very well happen in countries which were parties to the *Règlement de Vienne*.

§ 448. It has sometimes been said that *chargés d'affaires* accredited to the minister for foreign affairs rank among themselves according to the date of the presentation of their letters of credence (which is contrary to the *Règlement de Vienne*), and that it is for this reason that a *chargé d'affaires ad interim*, acting in the absence of the head of the mission, ranks after those belonging to the permanent category. But this can hardly be the reason, for occasionally a *chargé d'affaires ad interim* may bear a letter of credence as such. The existence of *chargés d'affaires ad interim* cannot be said to have been taken into account at Vienna in 1815. The distinction is now, however, generally recognised. (See § 297.)

§ 449. It was formerly usual to confer the rank of minister plenipotentiary on the counsellor to the British embassy at Paris in the absence of the ambassador, and up to 1906, whenever the ambassador first went on leave, the counsellor presented his credentials as such to the French Government. But in 1906 the counsellor of the British embassy at Paris was definitely appointed as minister plenipotentiary, and in 1929 as envoy extraordinary and minister plenipotentiary, a course which had previously been adopted in 1924 in the case of the counsellor to the British embassy at Washington.

§ 450. *Wives* of diplomatists enjoy the same privileges, honours, precedence and title as their husbands. The wife of an envoy consequently is entitled to :

<sup>1</sup> Pradier-Fodéré, i. 290 ; García de la Vega, 210.

<sup>2</sup> *Foreign Relations of the United States*, cited by Foster, *op. cit.*, 71.

1. A higher degree of protection than what is assured to her in virtue of her birth and sex.

2. The same personal exemptions as belong to her husband.

She accords to ladies of position at the court equality in matters of ceremony, only if her own husband accords equal rank to the husbands of those ladies.

She claims precedence and preference in respect of presentation, reception at court, visits and return visits, over other ladies, only if her husband enjoys precedence over the husbands of those other ladies.<sup>1</sup>

§ 451. The rules as to presentations at court and to members of reigning families, or in a republic to the head of the state, as well as to official visits which diplomatic representatives should pay, and visits to which they are entitled, are laid down with much precision at every capital, and can be learnt by inquiry in the proper official quarter.

§ 452. Ambassadors and other heads of missions, when invited to national or court festivities, are entitled to a place of honour among the persons invited, which is fixed by local regulation or usage. Neglect of this ceremonial obligation, in itself of minor importance, in the past sometimes led to strained relations. In 1750 the Russian envoy at Berlin was omitted from the list of persons invited to a certain court festivity, because he was supposed to be absent from the capital. The incident led to a strong protest from his court, and diplomatic relations between the two states were consequently suspended for a long period.<sup>2</sup>

§ 453. In monarchical countries the diplomatic body come after the members of the reigning family. In republics their precedence is not uniformly settled. In Great Britain foreign ambassadors yield precedence, so far as personages of British nationality are concerned, only to members of the Royal Family who are Royal Highnesses; ambassadresses are usually given a similar position. Foreign envoys and ministers are by courtesy given precedence after dukes and before marquesses, and their wives after duchesses and before marchionesses. The precedence of *chargés d'affaires* is not officially laid down and rests upon courtesy.

In France the diplomatic body come after the Presidents of the Senate and Chamber of Deputies; at Washington after the Vice-President. In South American republics it is believed they take rank after the members of the cabinet and the presidents of the legislative chambers.

<sup>1</sup> Schmelzing, 159.

<sup>2</sup> *Ibid.*, ii. 126.

§ 454. At the Court of St. James, heads of missions are expected to attend *Levés*. They and the personnel of their missions have the *entrée*, and are expected to appear at court and on state occasions in the uniforms or dress prescribed by the regulations of their own court for functions of a corresponding character. The ambassador and personnel of the embassy from the United States, and of some other embassies and legations accredited to the Court of St. James, wear evening dress, with breeches and stockings, at courts, state balls and evening state parties, but evening dress with trousers when *Levé* dress is worn.<sup>1</sup>

Heads of missions in Great Britain are supplied with a pass entitling them to break the line and to be accorded other exceptional facilities on occasions when the police are regulating the traffic at state functions, and are also accorded the privilege of a carriage pass entitling them to use the gates leading into and out of St. James's Park.

§ 455. Political significance has sometimes been attached to the absence of an envoy from a state ceremony. In 1818 the omission of the Prussian envoy to attend the diplomatic circle on the French King's birthday gave rise to public comment, and the inference was drawn that the two governments had been unable to come to an agreement about certain claims advanced by one of them. The allusions to these claims in both legislative chambers, combined with a new law of recruiting, excited a hope in the minds of certain hotheads that the claims would be referred to the arbitrament of arms. "Payez les étrangers du fer" was a common expression used in certain circles.<sup>2</sup> In 1823 Canning forbade the British ambassador in Paris to be present at any rejoicings given in celebration of the French successes in the Peninsula.<sup>3</sup>

§ 456. *Order of Precedence on the Occasion of Personal Meetings.*

If the ceremony is one at which the diplomatic body has to take what may be termed an *active* part, its members, ranged according to the order of precedence prescribed by the *Règlement de Vienne*, are placed on the right of the *centre* or post of honour occupied by the most eminent person present, *i.e.* usually the head of the state. If, however, the part taken by the diplomatic body is merely *passive*, *i.e.* that of spectators, a special place is set apart for it, such as a *tribune* in a church, boxes at a theatre for a *gala* performance, etc.<sup>4</sup> :—

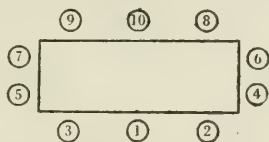
<sup>1</sup> *Dress and Insignia worn at His Majesty's Court* (1929), 88.

<sup>2</sup> Schmelzing, ii. 227.

<sup>3</sup> Stapleton, *Political Life of George Canning*, i. 482.

<sup>4</sup> de Martens-Geffken, i. 127.

As regards *seats*, the place of honour and consequently the precedence attributed to the persons forming the company :—At a four-cornered table of which all four sides are occupied, or at a round or oval table, the first place is usually considered to be facing the entrance, and the last place is that nearest to it. Counting from the first place, the order of seats is from right to left, and so on.



In standing, sitting or walking, the place of honour is at the right, *i.e.* when the person entitled thereto stands or walks at the right. Precedence is when the person entitled goes a step before the other, who is at his left side, as in ascending a flight of stairs or entering a room.

Amongst the Turks, and also at Catholic religious ceremonies, the left hand has often been regarded as the place of honour, so also among the Chinese.

In a lateral arrangement, *i.e.* when the persons present stand side by side in a straight line, the outside place on the right, or the central place, is the first according to circumstances. When there are only two persons, the right hand is the first (② ①); if there are three, the middle place is the first (③ ① ②), the right hand the second, the left hand the third. If the number is four, the furthest to the right is the first place, the next is the second, the left of the latter is the third, and then the fourth (① ③ ② ①).<sup>1</sup> Of five persons, the first is in the middle, immediately to the right is the second, to the left is the third, further to the right is the fourth, and the fifth is the furthest to the left (⑤ ③ ① ② ④). If six or more, the same principles are observed, according as the number is odd or even.

In perpendicular order, *i.e.* when one comes after the other, the foremost place is sometimes the most honourable, sometimes the last, the next person who follows or precedes has the second and

so on. If there are only two, the front place is the first (① ②); if three, the midmost is the first, the second is in front, the third

is behind ② ①. If four, the front place is the fourth, the next is ③

the second, the next to that the first, the hindmost is the third ④ ② ① ③.

<sup>1</sup> de Martens-Geffken, i. 131, puts the order thus ④ ③ ① ②.

If five, the midmost is the first, the second is immediately in front, the third is behind, the foremost is the fourth and the hindmost the

(4)

(2)

fifth (1). If there are six or more, the same principle is observed

(3)

(5)

according as the number of persons is even or odd.<sup>1</sup>

§ 457. In a diplomatic house precedence is accorded to officials of rank belonging to the country, provided no ambassadors are present. The latter yield precedence only to the minister for foreign affairs.

On the other hand, in the house of an official or dignitary of the country, the diplomatists go before every one, except the minister for foreign affairs.

In a diplomatic house the host gives precedence to his foreign colleagues over his own countrymen, no matter what the rank of the latter.

§ 458. Rules, as set forth in "Dress and Insignia worn at His Majesty's Court,"<sup>2</sup> specify occasions upon which orders, miniature decorations and medals are to be worn with evening dress, viz. "At all parties and dinners given in houses of Ambassadors and Ministers accredited to this Court, unless otherwise notified by the Ambassador or Minister concerned. (A decoration of the country concerned should be worn in preference to a British one, and if both are worn, the former should take precedence of the latter)."

§ 459. In former times the question whether an ambassador, or other person of high rank, such as a cardinal, should give the seat of honour to a person of lower rank paying him an official visit was held to be one of vital importance. Thus, in the instructions given to the Hon. Henry Legge, when he was being despatched to Berlin, in 1748, as envoy to the great Frederick, occurs the following passage :

Whereas Our Royal Predecessor King Charles the Second did, by his Order in Council, bearing date the 26th Day of August, 1668, direct, that his Ambassadors should not, for the future, give the Hand [*i.e.* the seat of honour] in their own Houses to Envoys, in pursuance of what is practised by the Ambassadors of other Princes, and did therefore think it reasonable, that His Envoys should not pretend to be treated differently from the Treatment He had directed his Ambassadors to give to the Envoys of other Princes ; We do accordingly, in pursuance of the said Order in Council,

<sup>1</sup> Miruss, *Europäisches Gesandtschaftsrecht*.

<sup>2</sup> Issued with the authority of the Lord Chamberlain, 151.

hereby direct you, not to insist to have the Hand from Any Ambassador, in his own House, who may happen to be in the Court where you reside.<sup>1</sup>

Callières, too, on this subject, says :

Les Ambassadeurs du Roy ont differens ceremoniaux selon les coûtumes établies dans les diverses Cours où ils se trouvent, l'Ambassadeur de France à Rome donne la main chez luy aux Ambassadeurs des Couronnes & de Venise, & ne la donne point aux Ambassadeurs des autres Souverains, auxquels les Ambassadeurs du Roy la donnent dans les autres Cours ; l'Ambassadeur de France a le premier rang sur tous les Ambassadeurs des autres Couronnes dans toutes les ceremonies qui se font à Rome, après l'Ambassadeur de l'Empereur. Ces deux Ambassadeurs y reçoivent en tout des traitemens égaux & se traitent entr'eux avec la même égalité.

Les Ambassadeurs des Couronnes à Rome sont assis et découverts durant les Audiances que le Pape leur donne.

Il y a plusieurs Cours où les Ambassadeurs du Roy donnent la main chez eux aux gens qualifiez des pays où ils se trouvent, comme à Madrid aux *Grands d'Espagne* & aux principaux Officiers, à Londres aux *Lords Pairs* du Royaume, en Suede & en Pologne aux *Senateurs*, & aux grands Officiers, & ils ne la donnent point en aucun pays aux Envoyez des autres Couronnes.

L'Empereur reçoit les Envoyez du Roy debout & couvert, & demeure en cet état durant toute l'Audiance, l'Envoyé étant seul<sup>2</sup> avec l'Empereur debout & découvert.

Les Electeurs Laïques les reçoivent & leur parlent debout & découverts durant les Audiances publiques qu'ils leur donnent, & ils sont assis & couverts lorsqu'ils ont Audiance des Electeurs Ecclesiastiques.

Les Souverains d'Italie se couvrent & les font couvrir, excepté le Duc de Savoye, qui ne les faisoit pas couvrir, avant même qu'il fût parvenu à la Couronne de Sicile, & qui leur parlait debout & couvert, eux étant debout & découverts.<sup>3</sup>

Les Nonces du Pape en France, donnent la main chez eux au Secretaire d'État des affaires étrangères, & ne la donnent point aux Evêques ni aux Archevêques lorsqu'ils reçoivent leurs visites en ceremonie.<sup>4</sup>

Ils donnent la main chez eux aux Ambassadeurs des Couronnes & à celui de la Republique de Venise qui sont dans la même Cour, et tous les Ambassadeurs leur cèdent la main en lieu tiers, excepté ceux des Roys Protestans, qui n'ont point de commerce public avec eux ; on leur donne le titre de *Seigneurie Illustrissime*, en leur parlant, & en leur écrivant, il y en a qui leur donnent le titre d'*Excellence*, comme aux Ambassadeurs, & ils le reçoivent d'ordinaire assez volontiers quoique ce soit un titre Laïque.<sup>5</sup>

<sup>1</sup> P.R.O., *King's Letters*, Prussia, 1737-1760, 2.

<sup>2</sup> This was formerly the rule at Vienna.

<sup>3</sup> Callières, 107.

<sup>4</sup> *Ibid.*, 131.

<sup>5</sup> *Ibid.*, 132.

Les Envoyez se rendent entr'eux les mêmes civilité que les Ambassadeurs à leur arrivée à l'égard des complimens des visites, les Envoyez de France & des autres Couronnes donnent la main chez eux dans toutes les Cours à tous les Envoyez des autres Souverains.<sup>1</sup>

§ 460. And the instructions given to the Marquis d'Hautefort in 1750, on his appointment by the King of France to represent him at Vienna, stated that :

Le sieur Morosini, ambassadeur de la république de Venise auprès du Roi, a refusé de visiter le Cardinal Tencin,<sup>2</sup> sous le prétexte que ce prelat ne voulait pas lui donner la main chez lui. Ce refus a paru d'autant plus singulier de la part de ce ministre que ses deux prédécesseurs immédiats n'avoient fait nulle difficulté de remplir ce devoir de politesse envers cette éminence. Comme le Comte de Kaunitz<sup>3</sup> voudra vraisemblablement suivre l'exemple du sieur Morosini, l'intention du Roi est que le marquis de Hautefort ne fasse point de visite aux cardinaux allemands, à moins que ceux-ci ne lui donnent la main chez eux ou qu'il soit bien assuré que le comte de Kaunitz aura reçu l'ordre de sa cour de se conformer en France au cérémonial observé jusqu'à présent par rapport aux cardinaux.<sup>4</sup>

It is to be hoped that such pretensions on the part of cardinals and ambassadors have not survived to the twentieth century.

§ 461. *Conduct of Diplomatic Representatives of Belligerents towards each other during War-time.*

Les Ministres des Princes qui sont en guerre & qui se trouvent dans une même Cour ne se visitent point tant que la guerre dure, mais ils se font des civilités reciproques en lieu tiers lorsqu'ils se rencontrent, la guerre ne détruit point les règles de l'honnêteté ny celles de la générosité, elle donne même souvent occasion de les pratiquer avec plus de gloire pour le Ministre qui les met en usage, & pour le Prince qui les approuve.<sup>5</sup>

The custom would seem to be that diplomatic agents of belligerent states accredited to neutral countries ignore each other, unless circumstances compel them to meet. During the late war the German ambassador at Washington is said to have ignored the British ambassador, while conceding to the French ambassador such courtesy as the latter was entitled to as *doyen* of the diplomatic corps.

Callières relates the story of the Sieur de Gremonville, French representative at Rome during hostilities between France and Spain, who, learning of a plot to kill the Spanish ambassador, warned the latter, and earned much praise for this

<sup>1</sup> Callières, 193.

<sup>2</sup> Who was also Foreign Minister.

<sup>3</sup> Appointed ambassador at Paris in 1750.

<sup>4</sup> *Recueils des Instructions*, etc., Austria, i. 326.

<sup>5</sup> Callières, 194.

action. The story recalls the incident of Fox communicating to Talleyrand, in 1806, information regarding a scheme for the assassination of Napoleon, disclosed to him by a Frenchman.<sup>1</sup>

§ 462. *Visits. Flags.* At some capitals it was formerly, and may still be in some cases, the usage for diplomats to visit each other and offer congratulations on their respective national fête-days, such as July 14 for France, July 4 for the United States. Where diplomatic houses have a flagstaff on the roof or in the grounds, the national flag is flown as a compliment to the other friendly Power, and it will also be hoisted on the national fête-day of the country represented.

§ 463. The flag flown by British diplomatic missions abroad is the Union Jack, with the Royal Arms in the centre on a white shield, surrounded by a green garland, and is flown either over the house of the mission, or at the bow of the boat or other vessel, if His Majesty's representative is afloat. It is customarily flown on the King's birthday, the Queen's birthday, the Prince of Wales's birthday, Empire day (May 24), on the occasion of the accession or on the birthday of the sovereign to whom the mission is accredited, and on the national holiday of the country in which the mission resides, amongst other occasions; and it is flown at half-mast on the occasion of the deaths of members of the British Royal family, or the death of the sovereign or head of state to whom the mission is accredited.

§ 464. *Signing Treaties and other Documents.*—If the treaty is a bilateral one, prepared in duplicate, each country has precedence in the preamble of the original to be retained by it, and in its signature. A usual method, where there are two texts, is to give each country precedence in the preamble of its own text, and then, to avoid further change, give priority to each of the two countries in turn by printing its text in the left-hand column of the original to be retained by it. If the treaty is a multilateral one between heads of states, the latter are mentioned in the preamble in the alphabetical order of the states over which they preside; if between governments, the contracting countries may be ranged in alphabetical order in the preamble. Signatures are appended in the same order. See, however, §§ 574–581, where the matter is more fully gone into.

§ 465. Rules of the past, which have largely fallen into desuetude, are said to have been as follows:

The first named in the text, especially in the preamble, has the first place in signing, the second named the second, and so on. When

<sup>1</sup> *Cambridge Modern History*, ix. 269; Holland Rose, *Life of Napoleon I.*, ii. 70.

the signatures are appended in two columns, the first place is at the top of the left-hand column, the second at the top of the right-hand column, and so on. But when resident ambassadors sign a protocol, they sign in the order of their local seniority, and not according to the alphabetical order of the French names of the country they represent. If the minister for foreign affairs also signs, his signature takes the first place. But cases exist where plenipotentiaries have disregarded all these rules, and have appended their signatures *pêle-mêle*.

§ 466. The title of "*Excellency*" is given to Ambassadors orally as well as in written communications in virtue of their diplomatic rank.

The title came into general use after the Peace of Westphalia. It is said to have been adopted by the French plenipotentiaries d'Avaux and Servien, in order to mark the difference between the ambassadors of crowned heads and those of lesser potentates.<sup>1</sup> After the Congress of Vienna it became general at all European courts. Of course, an ambassador of princely rank is addressed by the corresponding title he bears; if he is a cardinal by that of "*Eminence*."

§ 467. English usage does not accord it to Secretaries of State.<sup>2</sup> His Majesty's ambassadors, the Governors-General of His Majesty's Dominions, the Viceroy and Governor-General of India, and the Governors of the Provinces of India are officially addressed as "*Excellency*." The Governors of His Majesty's colonies receive the title by courtesy locally.

In French practice it is accorded to ambassadors, presidents of foreign republics, and in general to foreign great dignitaries, officers and ministers of state.

§ 468. Callières says :

On donne le titre d'*Excellence* aux Ambassadeurs extraordinaires et ordinaires, & on ne le donne point aux Envoyez, à moins qu'ils ne le prétendent par quelque autre qualité, comme celle de Ministre d'État, de Sénateur ou de Grand Officier d'une Couronne. Ce titre d'*Excellence* n'est point en usage à la Cour de France, comme il est en Espagne, en Italie, en Allemagne & dans les Royaumes du Nord, & il n'y a que les Étrangers qui le donnent en France aux Ministres & aux Officiers de la Couronne, & qui le reçoivent d'eux, lorsqu'ils ont des titres, ou des qualités qui leur donnent droit de la prétendre.<sup>3</sup>

§ 469. With respect to envoys extraordinary and ministers plenipotentiary, Rivier says : "Ce n'est que par cour-

<sup>1</sup> Flassan, iii. 93.

<sup>2</sup> See letter of C. Amyand to Colonel Yorke of July 4, 1751 (S. P. France, 242, P.R.O.).

<sup>3</sup> 125.

toisie qu'on leur donne, ainsi qu'à leurs femmes, le titre d'Excellence." <sup>1</sup> García de la Vega said that it was not due to any person in Belgium, but that the minister for foreign affairs accorded it to the ministers for foreign affairs of crowned heads, to ambassadors and to foreign envoys of the second category. Ministers and the foreign diplomatic body gave it to the king's ministers.<sup>2</sup>

§ 470. In Spain "Excellency" has been given to ministers of the crown, councillors of state, the Archbishop of Toledo, to Knights of the Golden Fleece, Collar Knights and Knights Grand Cross of the Order of Carlos III, to Knights Grand Cross of several other orders, and to a host of other personages, including Spanish and foreign ambassadors and ministers plenipotentiary of the first class. *Señoría ilustrísima* was given to third-class functionaries of the diplomatic body, and *Señoría* to the fourth and fifth classes of the same.<sup>3</sup>

§ 471. The Peruvian *règlement* of November 19, 1892, for the reception of foreign ministers and cognate matters, gave directions to address an envoy extraordinary and minister plenipotentiary as *Vuestra Excelencia*, a minister resident as *Vuestra Señoría Honorable*, a chargé d'affaires *en titre* or *ad interim* as *Vuestra Señoría*.

#### *Uniforms. British Practice*

§ 472. The uniform worn by members of His Majesty's diplomatic service is the civil uniform, which is worn only during tenure of office, or on retirement by special permission of the sovereign. The classes are the following :

First Class.—Ambassadors (with the addition of embroidered seams and sleeves).

Second Class.—Ministers.

Third Class.—Counsellors and commercial counsellors.

Fourth Class.—First secretaries, second secretaries, commercial secretaries (Grades I and II).

Fifth Class.—Third secretaries, honorary attachés, commercial secretaries (Grade III).<sup>4</sup>

§ 473. *Evening Dress*.—Evening dress coat of blue cloth with black velvet collar (the collar cut with notched ends), black silk linings; four buttons on each front, two at the waist behind, and one on each tail; also two small buttons on a 3-inch cuff, and one above. The facings are of the same

<sup>1</sup> *Principes du Droit des Gens*, i. 450.

<sup>3</sup> de Castro y Casaleiz, i. 360.

<sup>2</sup> *Guide Pratique*, 243.

<sup>4</sup> *Foreign Office List* (1931), 145.

material as the body of the coat. Buttons : gilt, mounted, the Royal Arms with supporters. Dress waistcoat : single-breasted, of white marcella, with four small gilt buttons to match. Trousers : plain black evening dress material.

This dress is worn abroad by members of His Majesty's diplomatic service at the discretion of the ambassador or minister ; it is worn at official dinners and parties (a) in the presence of members of the British Royal Family who are Royal Highnesses, and may also be worn if in accordance with local custom ; (b) in the presence of members of the Royal Family of the court to which the ambassador or minister is accredited. It is never worn in Great Britain.<sup>1</sup>

§ 474. *White Uniform to be worn in Hot Climates.*

The uniform is made of white drill, with embroidery on the cuffs and collar of the same width and material as that worn by diplomatic officers, but worked on white cloth and detachable ; two breast pockets, each buttoned with a small gilt button ; buttons full dress or undress ; white drill trousers without lace ; white gloves and black boots. It is worn with a white helmet, bearing on the front a gilt badge with the Royal Arms with supporters.

*Note.*—The sword is worn on paying or returning official visits and on other occasions of ceremony. It is carried in a white frog, projecting through a slit on the left side of the coat, and attached to a belt worn under the coat. On these occasions a spike is worn on the helmet.<sup>2</sup>

§ 475. *Dress to be worn by His Majesty's Representatives on Official Naval Visits.*

(a) When calling officially on a flag officer or on officers commanding His Majesty's ships, Levée dress should be worn by His Majesty's representatives, or alternatively white uniform in countries where such uniform is worn in lieu of Levée dress. On receiving visits from flag officers or officers commanding His Majesty's ships, however, His Majesty's representatives may use their discretion as to the dress to be worn, but if they do not wear uniform they should wear a frock coat or morning coat with star, in cases where the representative has received the first or second class of one of the British orders of knighthood.

(b) An ambassador or minister accompanying a naval commander-in-chief on a visit to pay his respects to the head of a state should wear Levée dress, or, where circumstances render such an alternative appropriate, white diplomatic uniform.<sup>3</sup>

<sup>1</sup> *Foreign Office List* (1931), 146.

<sup>2</sup> *Ibid.*, 147.

<sup>3</sup> *Ibid.*, 147.

§ 476. *Precedence of Naval, Military and Air Attachés, Commercial Counsellors, etc.*

At British missions abroad precedence as between members of the diplomatic service and naval, military and air attachés, and commercial counsellors, is regulated as follows :

(i) Naval, military and air attachés at His Majesty's Embassies and Missions abroad, irrespective of their rank, have place and precedence next in succession after the Diplomatic Counsellor, but before the Commercial Counsellor, or, at posts where the staff does not include a Diplomatic or a Commercial Counsellor, next in succession after Diplomatic First Secretaries, but before Commercial Secretaries First Grade.

(ii) Assistant naval, military and air attachés at His Majesty's Embassies or Missions abroad, irrespective of their rank, have place and precedence next in succession after Diplomatic Second Secretaries, but before Commercial Secretaries Second Grade, excepting at posts where such assistant attachés are the only resident naval, military or air representatives, in which case their place and precedence will be governed by the provisions of paragraph (i) above as though they held substantive appointments.

(iii) Excepting in the cases provided for above, Commercial Counsellors and First, Second, and Third Grade Secretaries in His Majesty's Commercial Diplomatic Service will rank respectively with, but after, Diplomatic Counsellors and Diplomatic First, Second, and Third Secretaries.

(iv) It is to be clearly noted, however, that, notwithstanding the above provisions, the charge of any of His Majesty's Embassies or Missions abroad will invariably devolve upon the senior diplomatic member of the staff, unless other arrangements are specially authorised by the Secretary of State.<sup>1</sup>

§ 477. In the case of other countries it is not apparent what relative precedence is accorded to such special attachés. In the diplomatic lists of the *personnel* of the foreign missions accredited to Great Britain, their names are as a rule ranged after the members of the diplomatic service, and usually in the order : military, naval, air and commercial attachés.

§ 478. *Decorations and Presents.*

In former days when a diplomatist left the court at which he had represented his sovereign, either on a permanent or temporary mission, he usually received a decoration. A gold snuff-box set with brilliants was a very usual gift.

§ 479. Queen Elizabeth objected to her subjects wearing foreign *insignia* of knighthood. Two young Englishmen, Nicolas Clifford and Antony Shirley, had been admitted by Henri IV to the Order

<sup>1</sup> *Foreign Office List* (1931), 131.

of St. Michael as a reward for their services. On their return to England they appeared at court displaying the *insignia* of the order, which provoked the Queen's anger, because the French king, without consulting her, had allowed these her subjects to take the oath to him on their admittance, and she threw them into prison. Nevertheless, she was too merciful to put the law in force against them, seeing that they were ignorant youths, and also because she entertained a special goodwill towards the King of France, who had conferred so great an honour upon them. She therefore ordered that they should return the *insignia* and take care to have their names removed from the register of the Order. Henri IV is said to have wittily replied : " I wish the Queen would do me a corresponding favour in return. I should like her to appoint to the Order of King Arthur's Round Table any aspiring Frenchman whom she might see in England." That Order, so celebrated in fable, disappeared long ago, just as that of St. Michael, in consequence of the disturbed state of affairs, had sunk so low, that a French nobleman said : " The chain of St. Michael, which was formerly a distinction for very noble personages, is now a collar for every kind of animal."

In 1596, when the title of Count of the Holy Roman Empire was conferred on Thomas Arundel of Wardour, with remainder to all his male and female descendants, it was argued in the House of Lords that an action for theft would lie against any one who branded with his mark the sheep of another, and an action of deceit against any one who by scattering food before the sheep of another enticed them into his own flocks.<sup>1</sup> Queen Elizabeth is reported by Camden to have said, in connection with this case : " There is a close bond of affection between princes and their subjects. As it is not proper for a modest woman to cast her eyes on any other man than her husband, so neither ought subjects to look at any other prince than the one whom God has given them. I would not have my sheep branded with any other mark than my own, or follow the whistle of a strange shepherd." <sup>2</sup>

§ 480. During the lifetime of Queen Victoria diplomatic servants of the crown were not allowed to accept foreign decorations, except in the case of special complimentary missions to foreign sovereigns. In all such cases the Queen's permission to accept and wear had to be obtained ; the intention to confer had to be notified to the Secretary of State through the British Minister accredited at the court of the foreign sovereign or through his minister accredited at the court of Her Majesty. By an order of 1898 permission could only be obtained by the chief of a complimentary mission from Her Majesty, or by a military or naval attaché on the termination of his appointment.<sup>3</sup> In 1911 the regulation was relaxed in so far

<sup>1</sup> Camden, *Annales Rer. Angl.*, Ludg., Batav., 1639, 734.

<sup>2</sup> The story is reproduced by Wicquefort in *L'Ambassadeur*, nouv. édit., augm., 1730, v. ii. 33, and Bk. ii. 99.

<sup>3</sup> There is a well-known story that when Castlereagh, at Vienna in 1814, appeared in his ordinary dress-coat with only the riband of the Garter among a

that private permission might be given to accept and wear on certain specified occasions, in a case where the decoration was more or less of a complimentary character. The rules of 1914 stated that permission in such cases would only be given on exceptional occasions, when in the public interest it was deemed expedient that acceptance should not be declined.

§ 481. The rules issued in 1930, however, are more stringent, and members of the British Diplomatic Service cannot ordinarily expect to be allowed to accept and wear foreign decorations. The only exceptions which the rules allow are for the grant of unrestricted permission in the case of decorations conferred for distinguished services in the saving of life; and for the grant of restricted permission, enabling the decorations to be worn on certain specified occasions alone, in the case of foreign honours conferred upon (1) British ambassadors or ministers when the King pays a state visit to the country to which they are accredited; (2) members of special missions when the King is represented at a foreign coronation, wedding, funeral or similar occasion; or (3) any diplomatic representative when specially accredited to represent His Majesty on such occasions (but not on the members of his staff). Permission is no longer granted to British ambassadors or ministers abroad to accept decorations when leaving their posts on final retirement.

It is not the practice in England to offer a decoration to a foreign ambassador or other diplomatic agent on quitting his post.

§ 482. The Constitution of the United States prohibits persons holding any office of profit or trust under them from accepting, without the consent of Congress, any presents, emoluments, office or title of any kind whatever from any king, prince or foreign state. The printed instructions of the Department of State are that the offer of presents, orders or testimonials shall be respectfully but decisively declined.<sup>1</sup>

### § 483.

In 1834 a rule was made in Great Britain prohibiting all persons in H.M. employment, in diplomatic, consular, naval or military capacities, from receiving from a foreign Government any presents, whatever might be the occasion on which presents might be offered. This rule has occasionally been relaxed by special permission of the Secretary of State. But in the "good old times" presents in

crowd of foreign ambassadors in full uniform and covered with orders, Talleyrand exclaimed, "*Ma foi ! C'est distingué !*" Croker, *Correspondence and Diaries*, iii. 191, puts the scene at Châtillon.

<sup>1</sup> Foster, *op. cit.*, 144, 150.

money to members of the Foreign Office were usually made on the occasion of the exchange of ratifications of an important treaty. Thus, in 1786, in connection with the commercial treaty between Great Britain and France, 500 guineas were given by the French Government, of which six-tenths went to the under-secretaries, one-tenth to the chief clerk, and three-tenths to the junior clerks. In 1793 the Russian Government made a present of £1000 in connection with conventions relating to commerce and to the war with France, of which the two under-secretaries received each £300, and the remainder was shared among ten other clerks. In the same year £500 were presented by the Sardinian chancery to the under-secretaries and clerks for the ratification of a treaty between King George III and the King of Sardinia, and similar sums were received from the German Emperor and the Spanish, Prussian and Sicilian chanceries, which were divided in the same proportions. Thus each under-secretary received in that year £900 from this source, in addition to his salary. Similar presents were made by the British Government to foreign chanceries in the King's name. The usual present to an ambassador on his retirement was of the value of £1000, and to an envoy of £500.<sup>1</sup>

§ 484. From this usage the transition to gifts intended to influence the course of politics in any particular country was easy. In 1727 the four Swedish commissioners who signed the Swedish accession to the Treaty of Hanover received 40,000 thalers from the English and French Courts.<sup>2</sup> This was probably in excess of the usual scale of such presents. Between 1765-6 England, France and Russia spent huge sums in endeavouring to influence the Swedish Diet. France alone, in eight months, distributed among its members nearly 1,830,000 *livres*, of which Denmark provided 100,000, but nevertheless France did not succeed in obtaining a majority in her favour.<sup>3</sup>

The practice of giving presents of this character upon the exchange of the ratifications of treaties and conventions, or to ambassadors or ministers of foreign courts sent to the King of England on missions of congratulations or condolence, or to the permanent representatives of foreign Powers on their taking leave on the termination of their appointments, was abolished in 1831 by a circular from Lord Palmerston.<sup>4</sup>

The United States, for a short period, from 1790 to 1793, adopted the practice of giving a gold chain to a foreign diplomatic agent on the termination of his appointment.<sup>5</sup>

§ 485. At the Congress of Vienna it was agreed that the plenipotentiaries should receive neither presents nor decorations, but each of the Powers concerned gave presents to Gentz, the principal secretary, and to others who had helped in drawing up the protocols. On the proposal of the British it was decided to present Gentz

<sup>1</sup> J. Q. Adams, *Memoirs*, iii. 527, cited by Foster, *op. cit.*, 147.

<sup>2</sup> Miruss, *op. cit.*, 200.

<sup>3</sup> Flassan, vi. 560.

<sup>4</sup> Hertslet, *Old Foreign Office*, 174-6.

<sup>5</sup> Foster, *op. cit.*, 143.

with a snuff-box and 800 gold ducats, to four of his assistants snuff-boxes and 500 ducats each, and to two more each 100 ducats, or 3000 ducats in all. This sum would come to over £1200. When the ratifications were exchanged of the treaty of peace of July 20, 1814, between France and Spain, presents, consisting of a gold snuff-box with a portrait of Louis XVIII, worth 15,000 francs, were provided for Labrador, the Spanish plenipotentiary, and a similar one, with the portrait of Ferdinand VII, for Talleyrand, besides £1000 (90,000 reals) for the clerks of the French and Spanish ministries for foreign affairs. On June 8, 9 and 10, 1817, a treaty was signed between Spain and the five Great Powers with respect to the succession to Parma on the death of the ex-Empress Marie-Louise, followed by the accession of Spain to the treaties of Vienna and Paris (of 1815). On this occasion the Spanish Minister of State received five gold snuff-boxes with portraits of the respective sovereigns, and Fernan Nuñez, the ambassador in London, received the same number. To the clerks of the Spanish Ministry of State a sum of 450,000 reals (10,000 ducats) was given for the treaty of June 10 (Parma succession). Besides these gifts, various decorations of the order of Carlos III were distributed. As the English Foreign Office neither gave nor received decorations, a sum of £1000 was given by the British embassy to the secretaries of the Spanish embassy, a corresponding amount being assigned to the secretaries of the British embassy. Presents to the amount of 90,000 reals (£1000) were also given to the chanceries of the five Great Powers. Care was taken that the decorations given on both sides to the chancery clerks should be of corresponding class, a matter always considered to be of the highest importance even in modern days, when such trinkets are exchanged.<sup>1</sup> At the end of 1817 the amounts of the gifts in money bestowed by the contracting parties on the occasion of the conclusion of treaties, of royal marriages, of congresses and other conventions, and since then instead of jewellers' gold and silver work, mutually fixed in money, were divided among the officials of the state chancery at Vienna. The sum accumulated up to that date was estimated at 28,000 ducats.<sup>2</sup>

§ 486. At the Congress of Teschen, in 1779, Repnin and Breteuil, the representatives of the two mediating Powers, each received a portrait of Maria Theresa set in diamonds. Frederick gave to Repnin his portrait, set in diamonds, estimated at 20,000 thalers, and a very fine snuff-box to Breteuil, but of less value.<sup>3</sup> Schmelzing states that Metternich, in November 1818, received the Grand Cross of the Netherlands Lion from the hands of the King of Holland. This was the twenty-fifth order with which His Highness was decorated.

<sup>1</sup> Villa-Urrutia, iii. 381, 382 n.; 448, 483.

<sup>2</sup> Schmelzing, ii. 208.

<sup>3</sup> Temperley, *Frederick the Great*, etc., 203.

## CHAPTER XXI

### TERMINATION OF A MISSION

§ 487. THE mission of a diplomatic agent may come to an end during his lifetime in any one of the following ways :

(1) By the expiration of the period for which he has been appointed, as, for instance, to a congress or a conference, when that comes to an end ; or, if he has been appointed *ad interim*, by the return of the minister *en titre*. A formal recall is in these cases unnecessary.

(2) When the object of the mission has been attained, as in the case of a ceremonial mission ; or by the completion or failure of a negotiation for which he has been specially appointed. A formal recall is in these cases unnecessary.

(3) By his recall on his appointment elsewhere, or by his resignation and its acceptance by his own government. By British rules the head of a mission is appointed only for five years, and his appointment ceases at the end of that time, unless it be specially continued. It is also a rule that every member of the diplomatic service must retire on attaining the age limit, though exceptions have occasionally been made to this rule.

(4) By his recall, owing to the dissatisfaction of his own government, or at the request of the government to which he is accredited. To avoid scandal, gossip or loss of reputation to the official who has been so unfortunate as to incur the displeasure of his official chief, it is usual to intimate to him that he may come away on leave of absence, or that his presence is desired at home in order that he may be consulted.

(5) By the decease of his own sovereign or of the sovereign to whom he is accredited. The death of a president of a republic does not produce this effect, nor does the expiration of the term of office of a president.<sup>1</sup> In either of the two former cases fresh credentials are necessary, unless the letter of the

<sup>1</sup> But when the French President, M. Thiers, resigned in 1873, and was succeeded by President MacMahon, the German Government insisted on new credentials, and its example was followed by Austria, Italy and Russia (Valfrey, *La diplomatie française*, ii. 190). Great Britain and other countries did not.

minister's new sovereign notifying his accession expressly states that the minister is to be continued. During the interval which may elapse the minister's ordinary relations with the authorities of the country go on as usual, and if he is engaged on some particular negotiation he can continue to carry it on *sub spe rati*. As a chargé d'affaires is accredited only to the minister for foreign affairs, the death of a sovereign does not affect his position. Neither does the retirement of a minister for foreign affairs, and the appointment of a new one, in either country.

(6) If for some violation of international law with regard to himself, or on account of some unexpected incident of serious gravity, the agent assumes the responsibility of breaking off relations. At the present day, when all capitals where diplomatists reside are connected by telegraph, such a case can hardly occur.

(7) When the government to which he is accredited, for any reason, sends him his passports without waiting for his recall. This may happen either when, in consequence of actions committed by him, the government to which he is accredited no longer regards him as *persona grata*, or when in consequence of offence given by his own government the other resolves to break off relations. Such a rupture of relations is not necessarily followed by war. If a war has become inevitable, the accredited minister of one or the other party is more often instructed, after presenting an *ultimatum*, to ask for his passports. The minister of the other party is usually instructed to take the same step, if his passports have not already been sent to him.

(8) By a change in the rank of the minister. This more often occurs by way of an increase of rank, as when an envoy is promoted to be ambassador, a minister resident to be envoy, or a chargé d'affaires *en titre* to be minister resident. This increase of rank may be permanent; on the other hand, it may only be temporary, as, for instance, when an envoy is raised to the rank of ambassador for the purpose of investing the sovereign with the insignia of a high order, or to attend such ceremonies as those of a coronation, Royal marriage, funeral, or some important national celebration. In the latter cases, once the event is over, the diplomatic agent simply reverts to his original rank.

(9) By the outbreak of war between the two states.

(10) By the deposition or abdication of the sovereign of either state.

(11) By the replacement of a monarchy by a republic, or a republic by a monarchy, in either state.

(12) By the extinction of either state.

§ 488. Whatever may be the causes that lead to the termination of a mission, the minister remains in possession of the immunities and privileges attached to his public character until he leaves the country to which he has been accredited within such reasonable time as may be necessary to complete and dispose of the affairs of his mission. (See §§ 320, 335.)

The Pan-American Convention concerning diplomatic officers, signed at Havana, February 20, 1928, lays down for the signatory states the following rules :

“ Art. 25.—The mission of the diplomatic officer ends—

- (1) By the official notification of the officer's government to the other government that the officer has terminated his functions ;
- (2) By the expiration of the period fixed for the completion of the mission ;
- (3) By the solution of the matter, if the mission had been created for a particular question ;
- (4) By the delivery of passports to the officer by the government to which he is accredited ;
- (5) By the request for his passports made by the diplomatic officer to the government to which he is accredited.

In the above-mentioned cases, a reasonable period shall be given the diplomatic officer, the official personnel of the mission, and their respective families, to quit the territory of the state ; and it shall be the duty of the government to which the officer was accredited to see that during this time none of them is molested nor injured in his person or property.

Neither the death or resignation of the head of the state, nor the change of government or political regime of either of the two countries shall terminate the mission of the diplomatic officers.”

§ 489. When a minister is about to quit his post, whether on account of his being transferred elsewhere, or because he is being retired on account of age, or at his own request, he asks for a farewell audience in order to present his letters of recall. This is done through the minister for foreign affairs, by a note enclosing a copy of the letter of recall. The farewell audience is usually a private one. But at distant posts, and if he is being transferred elsewhere, he may have to take his departure before the letter of recall can reach him. In this case it will be a matter within his own discretion whether to ask for a farewell audience. Unless his new appointment has been already gazetted at home it may be better not to mention

the probability of his not returning. In such circumstances his letter of recall will be delivered by his successor at the same time as the latter presents his own credentials. The same course will be followed when he has been recalled in consequence of the dissatisfaction of his own government.

§ 490. On receiving the letter of recall, the sovereign or president of republic to whom he has been accredited customarily addresses to the agent's own sovereign or president what is termed a *recredential*, expressing his satisfaction with the agent's conduct and regret at his departure. (See § 125.)

He does not ask for a farewell audience if he breaks off relations himself, or if his own government resolves on a rupture of diplomatic intercourse. If the latter is the cause of his return home, it may happen that he is instructed to come away without taking leave.

§ 491. If the mission terminates by the death of the minister at his post, and if he is to be buried in the country where he was accredited, it was formerly usual to offer a public funeral in his honour, the religious ceremony depending on local law and usage. At the present day all ceremonial marks of respect befitting the representative character of the deceased would doubtless be shown on such an occasion. An exceptional mark of respect has sometimes been paid by conveying the body of the deceased to his own country on a warship.

If his family desire to remove the corpse for interment elsewhere, their wishes must be respected, but in such a case they should be made known without delay, before temporary interment has taken place on the spot, as the laws of most countries render it difficult and troublesome to obtain an order for exhumation.

The secretary of legation, if there is one, will at once become *chargé d'affaires*, and it will be his duty to ensure that no political documents or cyphers are left with the private papers of the deceased, which latter devolve on his legal representatives. If there is no secretary, the consul should be authorised to perform this duty. It is by no means desirable to admit the intervention of a colleague of the deceased, even though he be the representative of a friendly or allied Power, as seems to be assumed by many writers will be done. The representative of another Power has no such right. Nor has the local authority any right to meddle with the papers.

Questions regarding the succession to the personal property of the deceased must be regulated by the laws of his own country. It may be prudent for a diplomatist to make one of

his staff an executor of his will in respect of his personal property in the country. His movable property can be re-exported without the payment of customs duties, or what are known in some countries as *droits d'extraction*. These rules, of course, do not apply when the deceased was a subject or citizen of the country where he was accredited. The succession to any real property which the deceased may have possessed there, and any legal formalities are, of course, regulated by the *lex loci rei sitæ*.

It is customary to accord to the widow and family of the deceased minister, for a reasonable time, the immunities which they enjoyed during his lifetime.<sup>1</sup>

The Pan-American Convention concerning diplomatic officers, signed at Havana, February 20, 1928, lays down for the signatory states the following rule: "Article 24.—In case of death of the diplomatic officer, his family shall continue to enjoy the immunities for a reasonable term, until they may leave the state."

### *Persona non grata*

§ 492. Numerous instances of a diplomatic agent becoming *persona non grata* are recorded in the books, and others are known to have occurred without being made public. In European countries such matters have often been covered up with official secrecy. In the present chapter the term is used to denote cases in which a diplomatic agent, after having been accepted and having entered upon his functions, has in some way given offence to the government to which he is accredited, so as to induce them to ask for his recall. In some instances the request has been granted, with more or less readiness; in others it has been declined. In the latter case it has usually happened that the offended government has informed the agent that no further official intercourse would be held with him and has sent him his passports.

### *Request for Recall*

§ 493. The following are instances in which a request for the recall of a diplomatic agent having been made, the request was complied with:

In 1792 *M. E. C. Genest* was appointed French minister to the United States. On his arrival, and before presenting his credentials, he began to fit out privateers to

<sup>1</sup> The substance of these paragraphs is largely taken from de Martens-Geffken, chap. ix.

prey on British commerce, in violation of United States neutrality. French consuls, sitting as courts of admiralty, condemned prizes, some of them being captured in United States waters. When remonstrated with, he expressed contempt for the opinions of the President and questioned his authority. Mr. Morris, the United States representative in Paris, was instructed to ask for Genest's recall, which was immediately granted.<sup>1</sup> The French Republican Government took advantage of the occasion to ask for the withdrawal of *Mr. Morris*, who had taken part in the effort to effect the escape of Louis XVI from Paris. This was at once conceded.<sup>2</sup>

§ 494. In 1804 the Spanish Government asked for the recall of *Mr. C. Pinckney*, the United States minister at Madrid. The reason assigned was a threatening note which he had addressed to the Spanish Minister of State. This note contained an intimation that he would inform American consuls of the critical state of the relations between the two countries, and direct them to notify American citizens to be ready to withdraw with their property. Mr. Pinckney was instructed to come away on leave of absence.<sup>3</sup>

§ 495. In 1809 *Mr. E. J. Jackson*, British minister at Washington, in a correspondence with the Department of State, respecting the repudiation by the British Government of an arrangement entered into by his predecessor, Mr. Erskine, for the settlement of the *Chesapeake* case and the withdrawal of the Orders in Council, intimated that when the agreement was concluded the United States Government were fully aware that Mr. Erskine had exceeded his instructions. The Secretary of State had already protested against this insinuation, and, on its being renewed, wrote to Mr. Jackson that no further communication would be received from him. Shortly afterwards the United States minister in London was instructed to ask for Mr. Jackson's recall. This was consented to by the Secretary of State for Foreign Affairs, who, however, maintained that Mr. Jackson did not appear to have committed any intentional offence against the United States Government.<sup>4</sup>

§ 496. In 1829 the United States Government had come to the conclusion that the prejudices entertained by a portion of the inhabitants of Mexico against their envoy, *Mr. Poinsett*, had greatly diminished his usefulness, and had decided to authorise his return home, if it appeared to him expedient. But before instructions to this effect could be despatched, the Mexican chargé d'affaires presented a request for his recall, which was

<sup>1</sup> Moore, iv. 485.

<sup>3</sup> *Ibid.*, iv. 490.

<sup>2</sup> *Ibid.*, iv. 489.

<sup>4</sup> *Ibid.*, iv. 514.

promptly granted, and a chargé d'affaires was appointed to Mexico in place of a minister.<sup>1</sup>

§ 497. In 1846 *Mr. Jewett*, the United States chargé d'affaires at Lima, became involved in a dispute with the Peruvian Minister for Foreign Affairs, in the course of which he characterised a decree which had been officially communicated to him as "a compound of legal and moral deformities presenting to the vision no commendable lineament, but only gross and perverse obliquities." He also omitted to address the minister as "Excellency" or "Honourable" in his written communications. He was recalled in consequence of a reiterated request from the Peruvian Government. In the despatch to Mr. Jewett, the Secretary of State laid it down that "if diplomatic agents render themselves so unacceptable as to produce a request for their recall from the government to which they are accredited, the instances must be rare indeed in which such a request ought not to be granted. To refuse it would be to defeat the very purpose for which they are sent abroad, that of cultivating friendly relations between independent nations. Perhaps no circumstances would justify such a refusal unless the national honour were involved."<sup>2</sup>

§ 498. In 1863 *M. H. Segur*, minister of Salvador at Washington, was alleged to have attempted to violate the neutrality laws of the United States during a conflict between Salvador and two other Central American republics. Without stating their grounds of objection, the United States Government, through their minister to the Central American States, intimated that it would be agreeable if M. Segur could be relieved of his official functions and an unobjectionable person appointed in his place. The minister, encountering some unwillingness on the part of the Salvadorean President, said that matters had come to the knowledge of the United States President which rendered M. Segur's recall "necessary in the highest degree." The Foreign Minister of Salvador thereupon replied that "the presence of M. Segur being required" in Salvador, the President had been pleased to authorise his recall in order that he might "render important services."<sup>3</sup>

§ 499. In 1871 Mr. Fish, the United States Secretary of State, informed the United States minister at St. Petersburg that the conduct of *M. Catacazy*, Russian minister at Washington, both officially and personally, had for some time past been such as "materially to impair his usefulness to his own government and to render intercourse with him, for either business or social

<sup>1</sup> Moore, iv. 491.

<sup>2</sup> *Ibid.*, iv. 492.

<sup>3</sup> *Ibid.*, iv. 500.

purposes, highly disagreeable" ; that in these circumstances the President was of opinion that the interests of both countries would be promoted if the head of the Russian legation were changed ; and it was hoped that an intimation to this effect would be sufficient. The President eventually consented to tolerate M. Catacazy until after the intended visit of the Grand Duke Alexis to the United States. On this occasion the Secretary of State reaffirmed the United States view that an official statement that a diplomatic agent had ceased to be *persona grata* is sufficient for the purpose of obtaining his recall. " The declaration of the authorised representative of the Power to which an offending minister is accredited is all that can properly be asked, and all that a self-respecting Power can give." Finally, M. Catacazy wrote to the Secretary of State that he had received orders to sail for Russia immediately after the end of the Grand Duke's tour. Mr. Fish replied that this was understood to be a practical compliance with the request for his recall.<sup>1</sup>

§ 500. In 1898 a translation of a private letter from *Señor Dupuy de Lôme*, the Spanish minister at Washington, to a Spanish journalist friend in Cuba, which had been abstracted from the mails at Havana, was published in a New York paper.<sup>2</sup> The letter described President McKinley as " weak and a bidder for the admiration of the crowd, besides being a would-be politician (*politicastro*) who tries to leave open a door behind himself while keeping on good terms with the jingoes of his party," and it intimated that it would be a good thing for Spain " to take up, even if only for effect, the question of commercial relations." The United States minister at Madrid was instructed to ask for his immediate recall, on the ground that the letter contained " expressions concerning the President of the United States of such a character as to end the minister's utility as a medium for frank and sincere intercourse between this country and Spain." The minister sought an interview with the Minister of State, who replied that the Spanish Government sincerely regretted the indiscretion of their representative, who had already offered his resignation. The United States minister subsequently addressed a note to the Minister of State, reminding him that he had not yet had the satisfaction of receiving any formal indication that the Spanish Government regretted and disavowed the language and sentiments employed. The Minister of State replied that at the interview referred to he had stated that the Spanish

<sup>1</sup> Foster, *A Century of American Diplomacy*, 433.

<sup>2</sup> Johnson, *America's Foreign Relations*, ii. 249.

Government sincerely regretted the incident, adding that "the Spanish ministry, in accepting the resignation of a functionary whose services they had been utilising and valuing up to that time, left it perfectly well established that they did not share, and rather, on the contrary, disauthorised, the criticisms tending to offend or censure the chief of a friendly state, although such criticisms had been written within the field of personal friendship, and had reached publicity by artful and criminal means." Two days later the Spanish Government appointed a new minister.<sup>1</sup>

§ 501. In 1915 the United States Government requested the recall of *Dr. Constantin Dumba*, the Austro-Hungarian ambassador at Washington, who admitted that he had proposed to his government plans for instigating strikes in American munition factories. This information had reached the United States Government through a copy of a letter borne by a United States citizen, and a further charge against the ambassador was that he was employing a United States citizen, protected by a United States passport, as a secret bearer of official despatches through the lines of the enemy of Austria-Hungary. Dr. Dumba was therefore no longer acceptable to the United States Government, who had no alternative but to ask for his recall on account of his improper conduct, which they did with deep regret, while assuring the Austro-Hungarian Government that they sincerely desired to continue the existing cordial and friendly relations.<sup>2</sup> On his departure, Dr. Dumba was, at the request of the United States Government, granted safe conduct by the Allied Powers to enable him to return to his own country. (See § 437.)

§ 502. In 1927 the French Government addressed a protest to the Soviet Government against the action of *M. Rakovsky*, their ambassador at Paris, in signing a public declaration, which, in the event of any future war against the Soviet Union, incited the workers of capitalist countries to work for the defeat of their governments, and their soldiers to join the ranks of the Red Army. This action, the French Government alleged, was a flagrant violation of engagements undertaken by the Soviet Government at the time of their recognition in 1924. The Soviet Government having disavowed the action of *M. Rakovsky*, the latter afterwards made a communication to the Press with the evident intention of aligning particular interests against the policy of the French Govern-

<sup>1</sup> Moore, iv. 507 : *Foreign Relations of the United States*, 1898, 1007.

<sup>2</sup> *Diplomatic Correspondence between the United States and Belligerent Govts.—Neutral Rights and Commerce*, x. 361.

ment in regard to the settlement of Russian debts. The French Government thereupon deemed it impossible, in the interests of the two governments and of the success of their negotiations, that M. Rakovsky should continue his ambassadorial functions at Paris, and as the Soviet Government declined to take the initiative in recalling him, they formally demanded his replacement by a more suitable representative. In complying with this request, the Soviet Government asked for the *agrément* of the French Government to the appointment of M. Dovgalevsky as his successor.<sup>1</sup>

§ 503. The following are instances in which the recall of a diplomatic agent was asked for and refused, whereupon his dismissal followed or he was no longer received :

In 1804 the *Marqués de Casa Yrujo*, Spanish minister to the United States, proposed to the editor of an American newspaper to oppose certain measures and views of the government, and advocate those of Spain. The government censured his action, as constituting a violation of an Act of Congress known as the "Logan Statute."<sup>2</sup> He defended his conduct in a note, which he caused to be published in the newspapers. On the ground of this attempt to tamper with the Press his recall was asked for, through the United States minister at Madrid. The Spanish Government replied that he had asked leave of absence to return home at a season convenient for making the voyage, and the President acquiesced in their request to let the object sought be thus accomplished. The minister remained, however, in the United States, and even returned to Washington. He was, therefore, informed that his remaining was "dissatisfactory" to the President, who expected him to leave the country as soon as the season permitted. In reply he maintained that he was still in possession of all his rights and privileges, and stated that he intended to remain in Washington as long as it might suit "the interests of the King" and his own "personal convenience." He followed this up with a somewhat intemperate protest, which he communicated to his colleagues and also caused to be published in the Press. The United States Government sent printed copies, together with a statement of the facts, to their representative at Madrid, instructing him to lay them before the Spanish Government. To their surprise, the Minister of State not only defended

<sup>1</sup> *Le Temps*, Oct. 15, 1927.

<sup>2</sup> The violation of the Logan Act was alleged to have been committed by certain American lawyers, who had furnished Yrujo with a legal opinion adverse to the view of the United States Government (H. Adams, *History of the United States*, ii. 259).

Casa Yrujo, but also declared that the communication of the papers without explanation was a disrespectful mode of addressing the Spanish Government. Yrujo's official relations with the Department of State ceased, and another Spanish diplomatist was received as chargé d'affaires.<sup>1</sup>

§ 504. In 1847 the Brazilian Government pressed for the recall of *Mr. Wise*, the United States minister at Rio. As this would, by implication at least, have involved a censure on his action in connexion with the imprisonment of a lieutenant and three sailors of the United States navy, the President declined to accede to the request. At the same time, the Brazilian diplomatic agent was informed that the United States minister having some time previously asked to be relieved, his request would be granted, and he would quit Rio during the following summer.<sup>2</sup>

§ 505. The Paris revolution of 1848 led in Spain to the adoption of reactionary measures by the government, and the reports received by Lord Palmerston from the British minister, *Mr. Bulwer*, induced him to recommend "earnestly to the Spanish Government the adoption of a legal and constitutional course of government." After holding up as a warning to the Spanish Cabinet the recent fall of the French king, he added, "It would then be wise for the Queen of Spain, in the present critical state of affairs, to strengthen the Executive by enlarging the basis upon which the administration is founded, and by calling to her councils some of those men who possess the confidence of the Liberal party." *Mr. Bulwer* addressed an official Note to the Duque de Sotomayor, Minister for Foreign Affairs, enclosing a copy of Palmerston's despatch, and advising the Spanish ministry "to return to the ordinary form of government established in Spain without delay." Sotomayor returned to him both documents, accompanied by a strongly worded note, expressing resentment at this interference in the domestic affairs of the country. He quoted also a paragraph which seemed to indicate that the contents of *Bulwer's* note were known outside, even before it reached the Minister of State. *Bulwer* replied, denying that the journal in question had any knowledge of his note, and justifying his own action. This drew from Sotomayor a further response, refusing to recognise him as competent to discuss subjects affecting the internal policy of Spain. At the same time, he despatched instructions to the Spanish minister in London to ask for *Bulwer's* recall, which Palmerston refused.

<sup>1</sup> Moore, iv. 508 ; H. Adams, *op. cit.*, ii. chaps. xi. and xvi.

<sup>2</sup> Moore, iv. 495.

The minister repeated the request in writing, but withdrew it on the following day, in consequence of fresh instructions from Madrid. Shortly afterwards, a fresh insurrection broke out in Madrid, and Bulwer addressed another note to Sotomayor, justifying the original note that had given so much offence, and complaining of the hostile language of the government Press. Sotomayor sent him a private letter, suggesting that he should anticipate as much as possible the leave of absence which he was contemplating. Bulwer replied that he could not "hasten his departure in consequence of a system of slander and libel to which no British minister or gentleman could make the slightest concession." Thereupon Sotomayor sent him his passports, and despatched an agent to London to offer explanations to the British Government, but Palmerston declined to receive him, as he was not provided with any credentials and possessed no diplomatic character. Isturíz, the Spanish minister, then presented a formal note to Palmerston, enclosing copies of his instructions, and adding that the Spanish ministry were convinced that Bulwer had been making use of his official position in favour of a party which aimed at obtaining possession of power. This had led them to ask for his recall, but as that was refused, the dispute had ended by the delivery of his passports to the British minister. Palmerston replied, calling on him to present in writing forthwith a statement of the grounds on which the Spanish Government had proceeded. Two more argumentative notes were exchanged, in the last of which Isturíz was informed that it was impossible for the Queen to continue to receive him as the minister of the Queen of Spain, or for Her Majesty's Government to continue to hold official intercourse with him. Isturíz thereupon quitted England, and diplomatic intercourse between the two countries was interrupted until its renewal in the early part of 1850 at the request of the Spanish Government.<sup>1</sup>

§ 506. In 1849 *M. Poussin*, French minister at Washington, in the course of a correspondence respecting the detention by Commander Carpenter, U.S.N., of a French ship until his claim for her salvage was satisfied, asked that the United States Government should disavow his conduct and reprove him. The Secretary of State, in transmitting Commander Carpenter's explanations, declined to comply with this demand. On this *M. Poussin* wrote :

"His [Comr. Carpenter's] opinions have little interest in our eyes, when we have to condemn his conduct. I called on the

<sup>1</sup> Correspondence presented to Parliament, 1848.

Cabinet of Washington, Mr. Secretary of State, in the name of the French Government, to address a severe reproof to that officer of the American Navy, in order that the error he has committed, on a point involving the dignity of your national marine, might not be repeated hereafter. From your answer, Mr. Secretary of State, I am unfortunately induced to believe that your government subscribes to the strange doctrines professed by Commander Carpenter . . . ; and I have only to protest, in the name of my government, against these doctrines."

The Secretary of State, in reply, acquainted him that the correspondence had been sent to the United States Minister in Paris, for submission to the French Government. As the latter did not consider that it furnished sufficient ground for M. Poussin's recall, the President caused him to be informed that the United States Government would hold no further correspondence with him as the minister of France, and that this decision had been made known to his government. M. de Tocqueville, the French minister for foreign affairs, who had conducted the correspondence with the Secretary of State in reference to this affair, shortly afterwards left office, and his successor dropped the matter. No interruption took place in the diplomatic intercourse of the two countries.<sup>1</sup>

§ 507. In 1852 the United States Government asked for the recall of *Señor Marcoleta*, the Nicaraguan minister, which was refused by that Republic. The Secretary of State then informed *Señor Marcoleta* that instructions had been sent to Mr. Kerr, the United States minister to Central America, to renew the request for his recall and the appointment of a successor, and that meanwhile no communication could be received from him in his official capacity. The charge against him was that he had communicated to the Press the contents of certain proposals in regard to an inter-oceanic canal, which had been shown to him unofficially and in confidence. He not only endeavoured to frustrate the negotiation, but also boasted of his influence with certain senators and threatened to use it. The Secretary of State wrote on this occasion to the United States minister at Nicaragua that "such a request can never be refused between governments that desire to preserve amicable relations with each other; for a minister whose recall has been asked loses, by that fact alone, all capacity for usefulness. If previously unacceptable, he must become doubly so by being retained in office in opposition to a distinct wish expressed for his recall. . . . The

<sup>1</sup> Moore, iv. 530.

gravity of the step is a sufficient safeguard against its being rashly taken." Mr. Kerr was told that, without stating why the recall was asked for, he was at liberty to explain why such a statement could not be made with propriety. A year afterwards, however, a new President of the United States having been elected, Señor Marcoleta presented fresh credentials as minister from Nicaragua, and continued to hold that position until April 1856.<sup>1</sup>

§ 508. In 1855, during the Crimean War, the United States Government complained to the British Government that British officials and agents had organised and were carrying out in the United States an extensive plan for enlisting recruits for the British army, in violation of the neutrality laws and in infringement of the sovereign rights of the United States. The British Secretary of State disclaimed any intention of sanctioning a violation of the United States laws by British officials, but the correspondence shows that his views of what might legally be done in that way differed from those of the United States Government. Prosecutions begun against some persons alleged to be acting as agents produced a written confession by one of the accused, implicating the British minister, *Mr. Crampton*, and the British consuls at New York, Cincinnati and Philadelphia. The United States Secretary of State thereupon asked for the recall of the minister and the removal of the consuls. Lord Clarendon, in reply, communicated declarations of the officials concerned, denying that they had committed the acts attributed to them, and expressed the hope that this would satisfy the United States Government. The latter, being unable to accept this conclusion, discontinued further intercourse with Mr. Crampton and sent him his passports (the exequaturs of the three consuls were also revoked). Lord Clarendon subsequently replied that the British Government retained their high opinion of the zeal, ability and integrity of Mr. Crampton, and believed that in many important particulars the President had been misled by erroneous information, and by the testimony of witnesses unworthy of belief. Such a conflict of opinion on such a matter must necessarily be the subject of serious deliberation by both parties. If Her Majesty's Government had been convinced that Her Majesty's officers had in defiance of their instructions violated the laws of the United States, they would have removed these officers. In the present case Her Majesty's Government were bound to accept the formal and repeated declaration of the President of his belief that the British

<sup>1</sup> Moore, iv. 497.

officials in question had violated the laws of the Union, and were on that account unacceptable organs of communication, and "they could not deny to the United States a right similar to that which, in a parallel case, Her Majesty's Government would claim for themselves, the right, namely, of forming their own judgment as to the bearings of the laws of the Union upon transactions which have taken place within the Union." The British Government, "while regretting a proceeding on the part of the President of the United States, which cannot but be considered as of an unfriendly character," did not suspend relations with the United States minister in London, and in January 1857 Lord Napier was appointed to represent Great Britain at Washington.<sup>1</sup>

§ 509. In 1875 *Mr. Russell*, United States minister at Caracas, addressed a despatch to his government, in which he said: "I feel bound to add that there are, in my opinion, only two ways in which the payment of so large an amount can be obtained. The first is by sharing the proceeds with some of the chief officers of this government; the second by a display, or at least a threat, of force. The first course, which has been pursued by one or more nations, will, of course, never be followed by the United States. The expediency of the second it is not in my province to discuss." This despatch having been published in a report to the House of Representatives, was resented by the Venezuelan Government, who thereupon sent *Mr. Russell* a note breaking off official relations with him, and informing him that the ground for this action was that in the despatch referred to "an opinion is advanced and statements are made which constitute a most violent attack, because they insult the administration most grievously, besides involving a falsehood." *Mr. Russell's* passports were sent to him a fortnight later. The Venezuelan Government did not at first offer any explanation to the United States of the step they had taken, and the Secretary of State, therefore, wrote to the Venezuelan minister at Washington, informing him that unless he should have been authorised to make one which might be regarded as satisfactory, the dignity of the United States Government would require that his relations with it should also terminate. The minister at first replied that he was instructed to offer the required explanation, but was unable to do so because of the loss of important papers by shipwreck. Three months later he wrote that he was instructed to withdraw and cancel the note to *Mr. Russell* breaking off relations with him. Later he communicated

<sup>1</sup> Moore, iv. 534; *Br. and For. State Papers*, xlvii. and xlviii.

instructions from his government, intimating that Mr. Russell would no longer be *persona grata*. The latter eventually resigned, but, having proceeded to Caracas, with the authorisation of the Department of State, to present his letters of recall, the Venezuelan minister for foreign affairs declined to receive him.<sup>1</sup>

§ 510. In 1888 *Lord Sackville*, British minister at Washington, received a letter purporting to come from a naturalised citizen of English birth, named Murchison, asking for advice as to the way he, and many other individuals in his position, should vote in the pending election of the President. Lord Sackville replied that "any political party which openly favoured the mother country at the present moment would lose popularity, and that the party in power was fully aware of the fact"; that with respect to the "questions with Canada, which have been unfortunately reopened since the rejection of the [fisheries] treaty by the Republican majority in the Senate, and by the President's message alluded to [by the writer of the letter], allowance must be made for the political situation as regarded the presidential election," and he enclosed an extract from a newspaper in which electors were distinctly advised to vote for Mr. Cleveland. This letter of Lord Sackville found its way into the newspapers, and caused a lively discussion in the Press. The *New York Tribune* published a report of an interview with him, in which he was represented to have said that "both the action of the Senate and the President's letter of retaliation were for political effect," but in a private note to Mr. Bayard, the United States Secretary of State, he said that his words were so turned as to impugn the action of the executive, and added: "I beg to emphasise that I had no thought or intention of doing so, and I most emphatically deny the language which is attributed to me by other papers of 'clap-trap' and 'trickery' as applied to the government to which I am accredited." Mr. Bayard telegraphed to the United States minister at London, complaining of the letter and of the language used at interviews with newspaper reporters, and suggested that Her Majesty's Government should take appropriate action without delay. Lord Salisbury declined to act until he should be in receipt of the precise language of Lord Sackville and his explanation. Lord Salisbury appears to have said also that the minister's recall would end his diplomatic career, which would not necessarily be the case if he were dismissed by the United States, for which there were precedents. Mr. Bayard thereupon addressed

<sup>1</sup> Moore, iv. 535.

a note to Lord Sackville, informing him, by the instructions of the President, that he was convinced that "it would be incompatible with the best interests and detrimental to the good relations of both governments that you should any longer hold your present official position in the United States," and enclosing a passport.<sup>1</sup>

§ 511. In 1905 *M. Taigny*, French minister at Caracas, in a note to the Venezuelan Government, protested against the act of the Venezuelan authorities in summarily closing, under a decree of September 4, 1905, the offices of the French cable company at Caracas and elsewhere, constituting, in the view of the French Government, a violation of the rights of the company. In their reply the Venezuelan Government asserted that the matter was one solely within the competence of the local authorities, and that to treat it through the diplomatic channel was derogatory to Venezuelan sovereignty ; that the use of the diplomatic channel in such matters was only justified where there was denial of justice ; this was not the case, a judicial decision had been rendered as the outcome of legal procedure. Further, the company had been the accomplice of those concerned in the last civil war ; and in supporting the company the French Government appeared to assume the responsibilities incurred by the company. The note ended by saying that the Venezuelan Government would not treat further "des affaires d'un caractère diplomatique et de bonne amitié avec le gouvernement français par l'intermédiaire de son représentant actuel à Caracas, l'honorable M. Olivier Taigny, jusqu'à ce qu'il ait reçu les explications satisfaisantes qu'exige la bonne amitié entre les nations qui la cultivent avec respect et convenance mutuels." The French Government requested the withdrawal of the final part of this note, regarding the interruption of all negotiations until Venezuela had obtained satisfaction. The Venezuelan Government thereupon suggested the withdrawal of both notes, and this was agreed to by the French Government on condition that an agreement was come to between Venezuela and the company. But in declaring, through the intermediary of the United States minister, that its note would be withdrawn, the Venezuelan Government added that it was hoped that the French Government would send a representative with whom more agreeable relations could be entertained. *M. Taigny*, however, remained in charge ; but on the occasion of the

<sup>1</sup> *Papers relating to the Foreign Relations of the U.S.*, 1888, pt. ii. ; *Br. and For. State Papers*, lxxxi. 479 ; *Moore*, iv. 536.

New Year official reception of the diplomatic corps by the President he was not invited to attend, and it appeared that only on condition of his recall would the Venezuelan Government resume official relations. In the meantime the last remaining office of the company was closed. The French Government thereupon announced M. Taigny's recall, leaving their interests in charge of the United States minister. But on M. Taigny going on board the French s.s. *Martinique* to ascertain the instructions of his government he was refused permission to return on shore, and thus virtually expelled from the country. The diplomatic body protested against this act as contrary to diplomatic immunity, but the Venezuelan Government maintained that immunity had lapsed with his actual recall.

As a consequence, the French Government on January 18, 1906, notified the *Venezuelan chargé d'affaires* at Paris that his mission was regarded as terminated, and that he should leave French territory the same day; he departed that evening for Liège, being accompanied to the frontier by the head official of the French *Sûreté générale*.<sup>1</sup> Diplomatic relations between the two countries were suspended for several years.

§ 512. In 1921, during the acute civil disturbances in Guatemala, Mr. H. Gaisford, the British minister, took part in giving assistance to certain ex-ministers and functionaries of the former government who were imprisoned and whose lives were in danger, and afforded shelter in the legation to some persons who had sought refuge there. In 1922, on the expulsion of the Roman Catholic Archbishop, Mr. Gaisford, who was also of the Roman Catholic faith, called at the Episcopal Palace, but was refused admission by the police agent in charge of the building. The Guatemalan minister for foreign affairs, thereupon, on the strength of a report from the chief of police, addressed a note to him accusing him of having struck the policeman and of having used abusive language; it was added that the substance of the note had been communicated to the other diplomatic representatives for their information. The accusation was denied by Mr. Gaisford; and the diplomatic body protested against an act taken on the simple word of a police agent, and without asking the British minister for his version of the matter. The Guatemalan Government nevertheless requested the recall of Mr. Gaisford, alleging that besides the incident in question he had intervened

<sup>1</sup> de Boeck, *L'Expulsion et les difficultés internationales qu'en soulève la pratique*. Cours de La Haye (1927), iii. 502.

in favour of Guatemalan citizens accused of conspiracy, and had afforded asylum to accused persons. Mr. Gaisford was instructed to come away on leave of absence, and the legation remained closed until September 1, 1924 when Mr. W. E. O'Reilly was appointed minister.

§ 513. In 1924 the Mexican Government requested the recall of *Mr. H. A. C. Cummins*, who was in charge of the British legation (*Chargé des Archives*), and whose energetic efforts on behalf of British owners of property in Mexico during the civil disturbances then raging in that country had rendered him *persona non grata*. It was added that if he did not depart within ten days compulsion would be used. The British Government had already decided to accredit Sir T. Hohler to Mexico on a special mission, in order to be furnished with an independent report, so as to enable them to come to a decision as to recognising General Obregon's administration. The Mexican Government were so informed, but while welcoming this proposal, they professed to be unable to await his arrival, alleging that Mr. Cummins had shown discourtesy throughout in his communications with them. They urged as an elementary principle that a government had at any time the right to request, with or without explanation, the recall of any diplomatist or agent of another country, and that it was due to international courtesy then to withdraw him. In the meantime Mr. Cummins reported that no food or anything else was permitted to enter the legation, that telephonic communication had been cut, and that even members of the diplomatic corps were not allowed to enter. Matters having reached this pass, no alternative was possible but to instruct Mr. Cummins to withdraw, and the good offices of the United States Government were sought to convey an intimation to him to this effect, and to obtain facilities for him to do so. These were courteously afforded by the United States Government, and on Mr. Cummins' departure the archives and effects of the legation were taken charge of by the United States chargé d'affaires.<sup>1</sup> In August 1925 Mr. Norman King was appointed British chargé d'affaires at Mexico, and in December 1925 Mr. E. Ovey was appointed envoy.

§ 514. *The Times* of June 9, 1931, published the following message from its correspondent at Riga: "*Mgr. Riccardo Bartolini*, Titular Archbishop of Laodicea of Syria, and Papal nuncio, quitted Lithuania yesterday. Mgr. Bartolini had long ceased to be *persona grata* in Kovno owing to his alleged undue interference with the internal affairs of the country,

<sup>1</sup> *Parliamentary Paper, Mexico*, No. 1 (1924).

and the Lithuanian Government had repeatedly intimated the desirability of his recall to the Vatican, but the nuncio remained until the Lithuanian authorities unambiguously told him to go, threatening otherwise to restrict his movements or expel him."

*Dismissal without notice*

§ 515. The following are instances of dismissal without notice:

In 1584 one Francis Throckmorton was arrested in England, in consequence of a letter he had written to Mary, Queen of Scots, which was intercepted, and the investigation showed that *Don Bernardino de Mendoza*, the Spanish ambassador, was party to a plot which aimed at the deposition of Queen Elizabeth. Camden<sup>1</sup> relates that while Throckmorton was under examination "Don Bernadino de Mendoza, the Spaniards Embassadour in England, secretly crossed the seas into France, in a great rage and fury, as if hee had been thrust out of England with breach of the privilege of an Embassadour, whereas he himselfe being a man of a violent and turbulent spirit, abusing the sacred privilege of an Embassy to the committing of treason, was commanded to depart the land, whereas by the ancient severity, he was to be prosecuted (as many thought) with fire and sword. For he had his hand in those lewd practises with Throckmorton and others for bringing in of forreiners into England, and deposing the Queene . . . But yet lest the Spaniard should thinke, that not Mendoza's crimes were punished, but the priviledges of his Embassadour violated, William Waad Clerke of the Councell, was sent into Spaine, to inform the Spaniard plainly how ill he had performed the office of his Embassie; and withal to signifie (lest the Queene by sending him away might seeme to renounce the ancient amity betwixt both kingdomes) that all offices of kindnesses should be shewed, if he would send any other that were desirous to preserve amity, so as the same kindnesses might in like sort be shewed to her Embassadour in Spaine."

Waad, however, was refused an audience of the Spanish King and "returned home unheard."

§ 516. In 1587 *L'Aubespine*, the French ambassador in England, was alleged, on the confession of his secretary, to be implicated in an attempt on the life of Queen Elizabeth.

<sup>1</sup> Camden's *Annales Rerum Anglicarum, et Hibernicarum regnante Elizabetha*; Translated into English by *R.N.*, Gent. London, 3rd edit., 1635, 263, 264.

Camden relates that he was a man wholly devoted to the Guisian faction, and that "supposing it best to provide for the captive Queene's safety, not by arguments, but by artificiall and bad practises, tampered first covertly for taking away Queene Elizabeths life with William Stafford, a young gentleman, and prone to apprehend new hopes, whose mother was one of the Queenes honorable Bed-Chamber, and his brother at that time Embassadour Legier in France; and there he dealt with him more overtly by Trappy his secretary, who promised him, if he would effect it, not onely infinite glory and great store of mony, but also especiall favour with the Bishop of Rome, the Duke of Guise, and in generall with all the Catholicks. Stafford, as detesting the fact, refused to do it; Yet commended one Moody, a notable hackster, a man forward of his hands, as one who for money would without doubt dispatch the matter resolutely." Stafford afterwards disclosed the plot, and L'Aubespine was sent for and confronted with the other parties to the conspiracy. His denials were unsatisfactory, and he affirmed that if he had been accessory yet he ought not to make discovery to any but the King his master. He was gravely admonished not to commit treason again, nor to forget the duty of an ambassador and the Queen's clemency, and told that he was not exempted from the guiltiness of the offence though he escaped punishment.<sup>1</sup>

(Though given as a case of dismissal without notice, it does not appear from this account as if dismissal actually followed. Oppenheim reads it that he was simply warned not to do it again.)

§ 517. In 1624 the *Marquesse de Inojosa* and *Don Carlos Coloma*, the two Spanish ambassadors then resident in England, informed James I that a dangerous conspiracy against his authority was being fomented by the Duke of Buckingham, whose influence, for political reasons, they wished to undermine. This accusation having, after investigation, proved entirely unfounded, they were called upon to furnish explanations and particulars, but failed to afford any. The King of Spain was thereupon informed, through the English ambassador at Madrid, of their grave offence, and was asked to punish them for it. It appears, however, from the narrative that the ambassadors quitted England after receiving intimation that the King would no longer hold intercourse with them; and that "matters growing daily worse and worse betwixt the two Crownes, they were rather rewarded than reprehended, Inojosa being promoted to be Governour of Milan, while

<sup>1</sup> R.N.'s translation of the *Annales*, 3rd edit., 1635, 337, 338.

Coloma received additions of employment and honours in Flanders.”<sup>1</sup>

§ 518. In 1654 *Le Bas* (called Baron de Baas in the French documents) was sent to England to assist the Président de Bordeaux, charged with a mission to re-establish friendly relations between France and England. In an interview with Naudin, a French doctor,<sup>2</sup> he proposed to the latter to foment “divisions and dissensions in this land,”<sup>3</sup> and to procure funds for the purpose from France. Naudin gave information, and Cromwell sent for Le Bas, taxed him with his complicity in the plot, and ordered him to leave the country within three days. Bordeaux protested and told the Protector that His Highness should first complain to the King of France and ask for his recall. But Cromwell replied that Bas was more guilty than Bordeaux supposed, and that such a person could not be suffered to remain any longer in England.<sup>4</sup>

§ 519. In 1720 *Bestoujew-Rioumine*, the newly appointed Russian resident in London, was instructed by Peter the Great to deliver *mémoires*, recounting the wrongs the Tsar had suffered at the hands of the British Government. These were published simultaneously with their delivery. The King of England and his ministers naturally were profoundly irritated by this proceeding of the Tsar, and it was decided to suggest to Bestoujew that he should quit the country within a week. This he accordingly did, and diplomatic relations were not re-established until 1731, when Rondeau was appointed British resident at Petersburg.<sup>5</sup>

§ 520. In 1726 the following announcement was made in the *London Gazette* :

Whitehall, March 4th.

“This day Mr. Inglis Marshal and Assistant Master of the Ceremonies in the absence of Sir Clement Cotterel Master of the Ceremonies went by His Majesty’s order to *M. de Palm* the Emperor’s Resident, and acquainted him that he having in the audience he had of the King on Thursday last delivered into the Hands of His Majesty a Memorial highly injurious to His Majesty’s Honour and the Dignity of his Crown ; in which Memorial he has forgot all Regard to Truth and the due Respect to His sacred Majesty ; and the said Memorial being also publickly dispers’d next Morning in Print together with a letter from the Count de Sinzendorff to him

<sup>1</sup> Sir John Finett, *Finetti Philoxonis : Som choice observations*, etc., London, 1656.

<sup>2</sup> Gardiner, *History of the Commonwealth*, etc., iii. 113, 121, 126, 151.

<sup>3</sup> Thurloe’s *State Papers*, ii. 309, 351.

<sup>4</sup> Guizot, *Histoire de la République d’Angleterre*, etc., ii. 406, etc. ; Thurloe, *State Papers*, 406, etc.

<sup>5</sup> F. de Martens, *Recueil des Traités*, etc., ix. (x.) 52.

the said Palm still more insolent and more injurious than the Memorial if possible ; His Majesty had thereupon commanded him to declare to him the said Resident Palm that His Majesty looked upon him no longer as a public Minister and required him forthwith to depart out of this Kingdom."

The origin of this affair is to be found in the alleged secret treaty between the Emperor and the King of Spain for the restitution of Gibraltar and Minorca to the latter, and the re-establishment of the Stuart dynasty on the throne of Great Britain, which was disclosed by Ripperda (§ 392) to the British minister at Madrid.<sup>1</sup> Allusion was made to this secret treaty in the King's speech on the opening of Parliament, January 17, 1726-7.<sup>2</sup> Palm thereupon received instructions from Count Sinzendorf to present a memorial to the King, protesting against the statements contained in the King's speech, as "manifest falsehoods," and "insulting and injuring, in the most outrageous manner, the majesty of the two contracting Powers, who have a right to demand a signal reparation and satisfaction proportioned to the enormity of the affront."<sup>3</sup> The memorial<sup>4</sup> presented by M. de Palm declared the statements quoted to be founded on the falsest reports, and concluded by demanding on behalf of "his sacred Imperial Majesty" "that reparation which is due to him by all manner of right, for the great injuries which have been done to him by these many imputations." On the day following, printed copies of translations of both documents into English and French were sent by him to members of both Houses, aldermen of London and other persons.<sup>5</sup> Palm had been instructed to publish the memorial, but the whole proceeding was justly resented by the King, who requited the insult by expelling the Emperor's resident and thus breaking off diplomatic relations.

§ 521. In 1788 Gustavus III, King of Sweden, wishing to take his revenge for the intrigues carried on by Catherine II among the malcontent Swedish nobles, saw his opportunity when his enemy, engaged in war against Turkey, had equipped a fleet destined to proceed to the Mediterranean. He proceeded then to send his own fleet to sea and to despatch a considerable land force into Finland. On this, *Count Rasoumoffsky*, Russian envoy at Stockholm, by order of the Empress, addressed a note of protestation to the Chancellor Oxenstierna, in which he declared "to the minister of His

<sup>1</sup> Cobbett, *Parliamentary History*, viii. 505, 509.

<sup>2</sup> *Ibid.*, 524.

<sup>3</sup> *Ibid.*, 557, 558, 599 n., and P.R.O., S.P. Foreign, Germany, vol. lx.

<sup>4</sup> *Ibid.*, 555-7 n., and P.R.O., same vol.

<sup>5</sup> *Ibid.*, 554.

Swedish Majesty, as well as to all those of the nation who had any share in the administration, that his mistress had no hostile intentions towards her neighbours." The King of Sweden, regarding the expression used in this note, in addressing it both to his ministry and "to all those of the nation who shared in the government," as a personal insult, and as intended to create disunion between the government and the nation by recalling the anarchy to which the revolution of 1772 had put an end, caused the writer to be notified that he must quit the kingdom. The attempt was made to compel him to embark on board a Swedish yacht which would have transported him to St. Petersburg, but he refused, and remained at Stockholm for seven weeks. An answer to Rasoumoffsky's note was despatched to Nolcken, Swedish ambassador at St. Petersburg, for delivery to the Russian Government. But Nolcken had already been informed that the Empress would no longer recognise him, and he was ordered to leave in a week's time.<sup>1</sup>

§ 522. In 1814 a Spanish subject named Espoz y Mina, who had failed in an attempt to seize the fortress of Pampeluna, took refuge in France. The Spanish chargé d'affaires, *Conde de Casa Flórez*, having heard that he was staying at an hotel in Paris, proceeded to arrest him and some other Spanish subjects, who were probably his accomplices, with the aid of a commissaire de police, without applying first to the French Government. This gave great offence to the Government of Louis XVIII. Mina, having been set at liberty, was expelled from France, and Flórez' passports were sent to him, instead of asking for his withdrawal. A complicated negotiation followed to which an end was put by Napoleon's escape from Elba.<sup>2</sup>

§ 523. In 1895 the Italian Government published a protocol signed at Caracas some time previously by the *diplomatic representatives of Belgium, France, Germany and Italy*, which in the opinion of the Venezuelan Government contained "gratuitous and defamatory statements reflecting on the honour of the State and the integrity of the Executive." Without taking the preliminary step of asking for the withdrawal by their governments of the two out of the original four diplomatists who were still resident, the Venezuelan Government sent them their passports. Simultaneously an explanation was addressed to the two Powers concerned. France, which was one of these, broke off diplomatic relations, while Belgium, the other, refrained from accrediting any one in place of the

<sup>1</sup> Ch. de Martens, *op. cit.*, ii. 275.

<sup>2</sup> Villa-Urrutia, iii. 407.

minister who had been dismissed. Eventually Venezuela invoked the good offices of the United States to bring about the restoration of diplomatic relations, her government declaring that Venezuela had intended no affront to France or Belgium, whose flags she had conspicuously saluted on the same day that she dismissed their personally objectionable agents.<sup>1</sup>

§ 524. In 1916 illicit acts of espionage carried on from Greek territory, and communications with enemy submarines operating in Greek waters, to the detriment of Greek, Allied and neutral shipping, made it necessary to give notice to the *German, Austro-Hungarian, Bulgarian and Turkish ministers at Athens* to quit Greece and betake themselves, on November 22, with their staffs, on board a steamer which would convey them to a port whence they could return to their respective countries. This notification was conveyed to them by the French naval commander, the facts having been communicated to the Greek Government, and they departed from Greece accordingly.

§ 525. In 1917 the United States Government published certain intercepted telegrams, addressed by *Count Luxburg*, German minister at Buenos Aires, to the German Government, and transmitted by the Swedish legation there viâ the Swedish Government. These telegrams advocated the sinking of Argentine vessels then on their way to Europe, without leaving any trace ("*spurlos versenkt*"). The publication of these telegrams aroused intense indignation in the Argentine Republic, and the Argentine Government sent Count Luxburg his passports, informing him at the same time that he had ceased to be *persona grata*. Meanwhile the German Government expressed keen regret at the incident and their disapproval of the methods suggested, which, they said, were personal to Count Luxburg. The publication of further telegrams, however, revealed even more serious machinations, and Count Luxburg, who had endeavoured to escape into the interior of the country, was arrested and interned. Eventually, at the request of the Argentine Government, who were anxious to effect his speedy departure from the country, the British Government consented to grant him a safe-conduct to return to Germany, but his health having given way under the strain, he was admitted to a German hospital suffering from mental and nervous breakdown.<sup>2</sup>

<sup>1</sup> Moore, iv. 548.

<sup>2</sup> *Times History of the War*, xv. 20 ; *American Journal of International Law*, xii. (1918), 135-140.

§ 526. Besides the incidents mentioned, references to others are found in various works, as follows :

In 1884 the Argentine Republic dismissed the Papal nuncio for opposing a law on education<sup>1</sup> ; in 1895 the Hawaiian agent in the United States was dismissed for criticism of United States policy<sup>2</sup> ; in 1906 the secretary left in charge of the nunciature of the Holy See at Paris was expelled for infringing laws concerning the activities of the clergy<sup>3</sup> ; Rustem Bey, the Turkish ambassador to the United States, was sent home early in the war for publishing indiscreet newspaper and magazine articles<sup>4</sup> ; Prince Henry of Reuss, German minister to Persia, who engaged in military activities in that country, was dismissed.<sup>5</sup>

§ 527. The recorded cases in which a diplomatic agent has either been dismissed or his recall demanded are of a wide variety, and while in some of these cases there can be no doubt that summary action was called for, in others there appears less justification for the steps taken.

On the general question Dr. Hannis Taylor has written<sup>6</sup> :

“when a sovereign dismisses an envoy without waiting for his recall, on the ground of his misconduct, not only the dignity of the envoy, but that of his state is so involved that justice and courtesy alike demand that reasons should be given sufficient to warrant a proceeding of such gravity. In justice to itself the dismissing state should formulate the grounds upon which its action is based—in justice to its agent the accrediting state should ascertain whether such grounds rest upon adequate proof. There is no reasonable foundation for the position assumed by Halleck,<sup>7</sup> and reproduced by Calvo,<sup>8</sup> that a state is in duty bound to recall an envoy who has become unacceptable to the government to which he is accredited simply upon its statement that he is so ; and that such state has no right to ask for reasons to be assigned why such envoy has become unacceptable since his reception as *persona grata*. Dana also falls into obvious confusion when he assumes that a dismissal or demand for recall may be rested upon the identical grounds upon which a state may object to receive a particular person in the first instance.<sup>9</sup> After all special objections to the personality of an envoy have been waived by his reception, it is obviously unjust

<sup>1</sup> Calvo, *Traité*, t. iii., § 1517.

<sup>2</sup> Hill, *American Journal of International Law* (1931), 257.

<sup>3</sup> de Boeck, *L'Expulsion*, etc., Cours de La Haye (1927), iii. 510.

<sup>4</sup> *Life and Letters of Walter H. Page*, ii. 49 n.

<sup>5</sup> Genet, *Traité de Diplomatie*, etc., i. 595.

<sup>6</sup> *A Treatise on International Public Law*, 350.

<sup>7</sup> *International Law*, i. 393.

<sup>8</sup> *Droit International*, § 1365.

<sup>9</sup> Dana's *Wheaton*, Note 137.

that he should be expelled and disgraced without a reasonable and provable cause. As Hall has fairly expressed it : ‘ Courtesy to a friendly state exacts that the representative of its sovereignty shall not be lightly or capriciously sent away ; if no cause is assigned, or the cause given is inadequate, deficient regard is shown to the personal dignity of his state ; if the cause is grossly inadequate or false, there may be ground for believing that a covert insult to it is intended. A country, therefore, need not recall its agent, or acquiesce in his dismissal, unless it is satisfied that the reasons alleged are of sufficient gravity in themselves.’<sup>1</sup> No more just or reasonable rule can be formulated as a standard by which the merits of particular cases of dismissal or forced recall, past or present, may be tested.”

The author adds in a footnote :

“ The government of the U.S. has, however, given its sanction to the view maintained by Halleck, Calvo and Dana : ‘ The official or authorised statement that a minister has made himself unacceptable, or even that he has ceased to be *persona grata*, to the government to which he is accredited, is sufficient to invoke the deference of a friendly Power and the observance of the courtesy and the practice regulating the diplomatic intercourse of the Powers of Christendom for the recall of an objectionable minister ’ ” (Mr. Fish, Secretary of State, to Mr. Curtin, November 16, 1871, with reference to the Catacazy case, § 499).

There appears, however, to be some inconsistency between the latter view and the action of the United States Government a few years later in the case mentioned in § 509.

§ 528. The Pan-American Convention of February 20, 1928, concerning the rights and duties of diplomatic officers, which in its preamble declares that it incorporates the principles generally accepted by all nations, says in Article 8 : “ States may decline an officer from another or, having already accepted him, may request his recall, without being obliged to state the reasons for such a decision.”

It can hardly be said, however, that the latter clause of this Article is in accordance with the principles generally accepted by all nations, or in accordance with their practice, since it can scarcely be imagined that in requesting the recall of an ambassador or minister, the government taking this step would omit the courtesy of informing the government of the state which had accredited him of their reasons for doing so.

On the whole, the conclusion to be drawn would seem to be that any government has the right of asking for the recall of a foreign diplomatic agent on the ground that his con-

<sup>1</sup> Hall, 359.

tinuance at his post is not desired, and the government which has appointed him has an equal right of declining to withdraw him. In judging of any controversy that may arise regarding the demand and the refusal to comply, the grounds on which recall was asked for and those on which it was refused must be carefully weighed. If the government which asked for the recall is dissatisfied with the grounds of refusal, it can send the diplomatic agent his passports. As long as the diplomatic agent of the dismissing government has not rendered himself *persona ingrata* there is no reason for dismissing him. That would only be done if the dismissal was intended to wear the aspect of a national affront. But if the grounds of dismissal appear insufficient to the government which accredited the diplomatist, it can indicate its view by entrusting the mission for a while to a chargé d'affaires. In any case of the kind a government asked to recall its agent will naturally desire to ascertain whether he has exceeded or acted contrary to his instructions, and thereby rendered himself responsible for the offence he has given. If it finds that he has not, it cannot, out of self-respect, consent to the demand, and must leave it to the other government to dismiss him. It is a tenable opinion that the agent's government is entitled to satisfaction on this point. It may prove difficult for the historian, who has only official documents before him, to pronounce in each instance what was the determining factor in the decision to ask for a recall. Ostensibly taken on political grounds, it may also have been influenced in some cases by the general conduct of the agent.

## BOOK III

### INTERNATIONAL MEETINGS AND TRANSACTIONS

#### CHAPTER XXII

##### CONGRESSES AND CONFERENCES

§ 529. FROM the point of view of international law there is no essential difference between congresses and conferences. Both are meetings of plenipotentiaries for the discussion and settlement of international affairs ; both include meetings for the determination of political questions, and for the treatment of matters of a social-economic order. The term congress has in the past been more frequently applied to assemblies of plenipotentiaries for the conclusion of peace and the redistribution of territory which in most cases is one of the conditions of peace, as, *e.g.*, the Congress of Vienna (1814-15) after the Napoleonic wars, the Congress of Paris (1856) after the Crimean war, and the Congress of Berlin (1878) for the settlement of affairs in the East, following the Russo-Turkish war ; but sometimes it has been conference, as, *e.g.*, the Conference of London (1830-3) after the revolt of Belgium, the Conferences of London (1912-13) to arrange terms of peace between Turkey and the Allied Balkan States, and the Paris Peace Conference of 1919. At the Congress of Paris (1856) the assemblage began by styling itself a conference, and then, apparently without discussion of its title, assumed the name of "congress."

§ 530. In earlier times congresses were ordinarily held at a neutral spot, or at some place expressly neutralised for the purpose of the meeting. There were often mediators, who presided over the discussions, whether carried on orally or in writing. Before the dissolution of the Holy Roman Empire in 1806 the principal representative of the Emperor discharged the functions of president. In the nineteenth century congresses were mostly held at the capital of one of the Powers concerned, and then the chancellor or minister for foreign

affairs of that Power usually presided. On these occasions, besides the specially deputed plenipotentiaries, the local diplomatic representatives of the respective Powers were also appointed.

§ 531. The first international gathering to which the name of conference was given was that on the affairs of Greece, held at London in 1827-32. Conferences were usually held at the capital of one of the Powers taking part, the presidency being nearly always offered to the minister for foreign affairs of that Power, the other members being ordinarily the local diplomatic representatives of the other Powers.

§ 532. The statement is ascribed to Canning in 1824 that the plenipotentiaries at a congress are arbiters, and at a conference advisers only. The Duke of Argyll said of a congress that it was essentially a court of conciliation—an assembly in which an endeavour is made to settle high matters in dispute by discussion and mutual conciliation.<sup>1</sup> At the present day the term “conference” is habitually used to describe all international assemblages in which matters come under discussion with a view to settlement. The treaties of peace concluded after the war of 1914-18 resulted from the deliberations of the Peace Conference of Paris, which in its broad outlines resembled the Congress of Vienna of 1814-15. The Universal Postal Convention, however, continues to be revised periodically at congresses of the states forming the Postal Union.

§ 533. The place of meeting of an international conference may be determined in various ways. Sometimes it is the capital of the state which proposes this means of adjusting the questions at issue; or, it may be, that of the state most concerned in their settlement. Sometimes it is chosen as a convenient centre for all parties to meet; or to enable discussions to be carried on in a neutral atmosphere. In the case of a multilateral treaty about to undergo revision, it may be determined by the place of the former meeting, by a provision in the treaty itself, or by an understanding reached at the previous conference.

Instances may be found in the Conference of London (1850-2), Great Britain acting as mediator in the pending dispute between Denmark and Prussia over Schleswig and Holstein; in the Congress of Paris (1856), the French Emperor having taken a prominent part in the peace preliminaries after the Crimean war; in the Hague Peace Conference (1899), the Emperor of Russia, at whose initiative the conference was summoned, having proposed this meeting-place in view of its

<sup>1</sup> *The Eastern Question from 1856*, ii. 97.

detachment from localities where political interests might supervene ; in the Conference of Algeciras (1906), in view of its proximity to Morocco, the subject of the discussions ; in the London Naval Conference (1908-9), having regard to the predominant naval position of Great Britain ; in the Paris Peace Conference of 1919 ; and in the Conference of Locarno (1925), chosen, with the concurrence of the Swiss Government, in virtue of its being in neutral territory.

The Geneva Conference of 1864, for the amelioration of the condition of the wounded in armies in the field, was convened by the Swiss Government, and the subsequent conferences of 1868, 1906 and 1929, for the successive revisions of the Red Cross Convention, took place also at Geneva ; on the last occasion the work of the conference was extended to the framing of a convention for the treatment of prisoners of war, in amplification of the rules of the Hague Land War Convention of 1907. The Second Peace Conference of 1907, for the revision of the conventions concluded at the former Hague Conference of 1899 and their amplification, similarly met also at The Hague. In the case of the Universal Postal Convention and the Radiotelegraph Convention, which are subject to periodical revision, the place of the next meeting is on each occasion determined by agreement at the conference.

§ 534. Invitations to a conference are usually preceded by an exchange of views between the governments concerned, or at any rate those chiefly affected ; and in the case of a conference for the conclusion of peace normally by the conclusion of preliminaries of peace or an armistice between the belligerents. It is always desirable, wherever possible, that the scope of the intended conference should be determined beforehand, so as to provide a definite basis for the discussions. Failure to reach an agreement has sometimes resulted from want of due initial preparation, and a preliminary step should be the formulation of a programme of the matters which are to be brought under discussion with a view of arriving at a settlement. As the Duke of Argyll observed :

“ It was reasonable too, as it always must be, not to go into Congress without some previous understanding with the Powers to be there assembled. Every man conversant with the conduct of affairs knows very well that public and formal discussions cannot be conducted with any hope of a successful issue unless such preliminary understandings have been arrived at.”<sup>1</sup>

<sup>1</sup> *Op. cit.*, ii. 128.

§ 535. Ordinarily the invitations to a conference are issued by the government of the state wherein it is to be held, but cases may, of course, occur in which another government does so, after the consent of the former has been given to the conference being held in its territory. In the case of the Peace Conference of 1899 at The Hague, the proposals were made by the Emperor of Russia, but the invitations were issued by the Netherlands Government, which took part in the conference. In the case of the Algeciras Conference of 1906, an invitation was addressed to the Powers by the Sultan of Morocco, but the meeting took place in Spain, which was a party to the conference. In the case of the Locarno Conference of 1925, the concurrence of the Swiss Government, which was not a party to the conference, was a necessary preliminary to the meeting being held in Swiss territory. In the case of the conference for the Codification of International Law held at The Hague in March-April, 1930, the invitations were issued by the Council of the League of Nations, and the conference was held in the territory of the Netherlands, one of the members of the League.

§ 536. On important occasions congresses or conferences have often been attended by Prime Ministers or other high personages of the states concerned. Lord Beaconsfield, when Prime Minister, with Lord Salisbury, Secretary of State for Foreign Affairs, attended the Congress of Berlin, 1878, which was presided over by Prince von Bismarck, German Chancellor. The Paris Peace Conference, 1919, was attended by the President of the United States, the Prime Ministers of Great Britain, Australia, New Zealand and the Union of South Africa, the French President of the Council, etc. The Locarno Conference of 1925 was attended by the Italian (on one occasion) and Polish Prime Ministers, the German Chancellor, and the British, French, German, Belgian and Czechoslovak Ministers for Foreign Affairs.

§ 537. But more often, and normally in the case of the numerous conferences of non-political or semi-political character held in modern times, diplomatic representatives are appointed as chief plenipotentiaries, assisted sometimes by others ; or the plenipotentiaries may be officials or persons having special knowledge of the subject or subjects to be discussed. The importance of the occasion will determine the numbers of their suites, which often include officials or persons having necessary legal or technical qualifications, secretaries, translators, etc.

§ 538. The plenipotentiary (or plenipotentiaries) of each state, with his (or their) staff, constitute what is called the delegation of that state to the conference ; if there is more than one plenipotentiary for a state, the senior is usually designated as first plenipotentiary, and he and the others will sit together as a group. If the agenda range over a wide field, the staff may amount to a considerable number of persons, more especially on the part of the receiving state. At the Washington Conference of 1921-22 on the Limitation of Armament and Pacific and Far Eastern questions, the four plenipotentiaries of the United States were assisted by an advisory committee of twenty-one persons : a secretariat of sixteen persons ; for ceremonial, protocol, etc., five persons. There was a technical staff for the limitation of armament of twenty ; a staff on chemical warfare, consisting of a professor of chemistry and officers of the army and navy ; a staff of sixteen on Pacific and Far Eastern questions ; a staff of four for legal questions ; a staff of two on economic questions and merchant marine ; a staff on communications of four civilians and officers of the army and navy ; two cartographers ; two officers for Press work ; one for archives ; one disbursing officer ; and two editors.

§ 539. The plenipotentiaries at an international conference are, as their name implies, furnished with full powers from the head of the state or the government they represent, empowering them to take part in the negotiations, and to conclude, subject if necessary to ratification, any treaty instrument which may result from the deliberations. (See § 135.) Where a state appoints more than one plenipotentiary, full powers may be issued to each, or, on the other hand, their names may be included in a single document, authorising them to act jointly or severally. As regards diplomatic privileges, see § 365. The names of the plenipotentiaries should be communicated in advance to the government of the state wherein the conference is to be held. If they have to traverse a third state on their journey thither, it is well also to advise the government of that state of their intended mission.

§ 540. The language employed at an international conference is usually French, but there is a growing tendency to use English also. On recent occasions, such as the Paris Peace Conference of 1919, and the Washington Conference of 1921-22, both English and French were officially used. At League of Nations conferences both French and English have equal validity. At Pan-American conferences, French, English, Spanish and Portuguese appear to have been em-

played in the treaties concluded. And where but a limited number of states take part the language of one or other of them is sometimes adopted as the official language. At Brest-Litovsk, in the peace negotiations of 1917-18 between Russia and the Central Powers, the German, French, Russian, Turkish and Bulgarian languages appear to have been from time to time employed.

§ 541. The president of an international conference is usually, but not always, the principal representative of the country in which it is held, if that country is a participant. Often he is the minister for foreign affairs. His election may be moved by the representative of the country which comes first in alphabetical order, or by the *doyen d'âge*, or sometimes by some other specially chosen for the occasion.

At the Congress of Vienna (1814-15) Count Metternich, Austrian minister for foreign affairs, was elected president on the proposal of the French plenipotentiary. At the London Conferences of 1830-33 and 1850-52, concerning Belgian and Danish affairs, respectively, the British Secretary of State for Foreign Affairs presided. At the Congress of Paris, 1856, the French minister for foreign affairs presided, on the motion of the Austrian plenipotentiary. At the Congress of Berlin, 1878, Prince von Bismarck was elected president on the proposal of the Austro-Hungarian plenipotentiary. At the Hague Peace Conferences of 1899 and 1907, the Netherlands minister for foreign affairs proposed the election of the Russian first plenipotentiary, who on the first occasion (1899) proposed that the Netherlands first plenipotentiary should be honorary president; on the second occasion (1907) the Netherlands minister for foreign affairs was appointed honorary president, the Netherlands first delegate being effective vice-president. At the Algeciras Conference of 1906, the Spanish minister for foreign affairs was elected, on the proposal of the German first plenipotentiary. At the London Naval Conference of 1908-9, Lord Desart, the British first plenipotentiary, was elected on the proposal of the French plenipotentiary, the *doyen d'âge*. At the Peace Conference of Paris, 1919, M. Clemenceau, President of the Council and minister for foreign affairs, naturally presided. Other instances will be found in the examples appended to the present chapter.

§ 542. The functions of the president of an international conference are to open the proceedings by a speech setting forth the purposes and objects of the conference; to name the

members of the secretariat, previously agreed to informally by the representatives in general ; to direct the course of the discussions throughout the continuance of the conference ; and ultimately to declare the conference closed. At the final meeting it is customary to propose a vote of thanks to him for his services.

§ 543. Precedence among the plenipotentiaries is customarily determined by the alphabetical order in French of the states represented, unless some other order is agreed upon. The order in which they sit is alternately to the right and to the left of the president. (See § 456.) At a peace conference the representatives of the belligerent states may fall into two opposite groups.

§ 544. The course of procedure at a conference varies with the importance or degree of complexity of the matters under discussion. Rules of procedure are framed at the outset for guidance. Where, as often happens, committees are set up to discuss particular items on the agenda, these in turn appoint a chairman, frame if necessary rules of procedure, and in addition to a secretary or secretaries, often appoint a "rapporteur," to prepare the report to be furnished to the plenary body. Sub-committees may be formed from the members of a committee to deal with special points arising, and these in turn report to the committee. As apart from the main work of discussion, a small committee to examine the full powers of the representatives is desirable, and a drafting committee to prepare the text of the treaty instrument resulting from the work of the conference is nearly always necessary.

§ 545. When a "rapporteur" is appointed by a committee which has been charged with the discussion of a particular subject, he may or may not be also the chairman of the committee ; and his functions as "rapporteur" are to summarise the discussions in the form of a report, showing the conclusions arrived at by the committee in the matter. This report, which is first submitted to the members of the committee, is then communicated by him to the plenary body, and he is the mouthpiece of the committee in placing their decision before that body. And similarly in the case of a sub-committee which has been appointed to report to the committee itself.

§ 546. Plenary meetings of the whole body of representatives take place from time to time as the work proceeds. The first plenary meeting is of an introductory character, for the election of president, naming of the secretariat, framing of the lines on which the conference is to be organised, the

appointment of committees, etc. Thereafter plenary meetings are held, as may be required, to receive and consider the reports of the committees. In a typical case, where the results of the discussions are embodied in a treaty, and where the issues involved are free from special difficulties, the successive stages might, for instance, be—a first reading of the draft treaty prepared; followed by a further reading, should modifications have been proposed and referred back to the committees; and then a final reading of a formal character, at which the finished result would be submitted for the signatures of the plenipotentiaries.

§ 547. At all important conferences much care is devoted to the preparation of a formal record of the proceedings. A *procès-verbal* is prepared by the secretary or secretaries on the occasion of each sitting, setting forth the date, hour and place of meeting, the names of the plenipotentiaries and their staffs, and the states represented; followed by a statement of the deliberations carried on and the conclusions reached, and the hour at which the sitting closed. To this are attached any draft projects which may have come under consideration, declarations made, etc. The *procès-verbal* is signed by all the plenipotentiaries present, and usually by the president and secretary-general or secretaries. Sometimes it is read at the following sitting and adopted, but it is more usual first to submit proofs to the plenipotentiaries for any necessary amendments, when the president states the fact of agreement at the next sitting and pronounces its adoption, whereupon it is signed. The original is preserved by the government of the state in which the conference is held, which supplies certified copies to the representatives of the others.<sup>1</sup>

§ 548. In modern practice, the signatures to a treaty, drawn up at the conclusion of a conference as the outcome of its deliberations, are appended, in the case of a compact between heads of states, in the alphabetical order of the states over which they preside; in the case of a compact between governments, in the alphabetical order of the states represented. But in the case of a treaty of peace the signatories on each side may be classed separately, as in the Treaty of Versailles and other treaties of peace resulting from the Paris Peace Conference of 1919.

§ 549. In the past a great part of the work of a congress

<sup>1</sup> Basdevant, *La Conclusion et la Rédaction de traités*, Cours de La Haye (1926), v. 629.

or conference might relate to the nice adjustment of matters of ceremonial and precedence, the due observance of the *alternat* (see § 39) and other points of strict etiquette, such as whether negotiations should be carried on by means of written *pro-memoriâ* or *viva voce*, whether certain Powers should be admitted or not, the wording of safe-conducts and full powers, the use of the distinction "Excellency," and the recognition of titles assumed by certain sovereigns. At the Congress of Nijmegen (1676-9) it is recorded that on the signature of the treaty of peace between France and Spain, two copies of the treaty having been prepared, one in French and the other in Spanish, and laid on the table at which sat the English mediators, the three French plenipotentiaries entered by one door at the same moment as the three Spanish plenipotentiaries entered at the other; they sat down simultaneously in exactly similar armchairs, and signed both copies respectively at the same instant.

§ 550. The question what states shall be admitted to take part in a conference is, however, one that may occasionally arise. Of the Paris Peace Conference, 1919, Professor Temperley says :

"The first question was to decide what Powers were to be represented at the conference, and what number of plenipotentiaries were to be allowed to each. It was finally determined to admit all those who had declared war on, or had broken off relations with, Germany, though the neutrals were to be allowed to take part in discussions which affected their special interests."<sup>1</sup>

§ 551. The principal secretary at a conference is usually an official of the country in which it is held, if that country is a participant, and the other members of the secretariat are also often furnished by it, supplemented, it may be, by others drawn from among the suites of the various representatives. The secretariat comes under the control and authority of the president of the conference, and while its main duties are the preparation of the *procès-verbaux* and official records of the conference, they comprise also the arrangement of all matters of routine, and such other duties as may be assigned to it. Translations of speeches and documents are often required, and communications may have to be issued to the Press. The bureau in which these activities are carried on is placed under the guidance of the president and vice-presidents, assisted by the secretary-general.

§ 552. The proceedings of the conference, and the results

<sup>1</sup> *History of the Peace Conference of Paris*, i. 247.

arrived at, are on important occasions sometimes recorded in a Final Act, more especially when these results are embodied in a number of treaty instruments, the titles of which are set out, with, it may be, certain "vœux" or recommendations, in the Final Act, which is presented for signature by the plenipotentiaries at the last meeting of the conference. (See § 614.)

§ 553. As regards conferences held under the auspices of the League of Nations, no general rules of procedure have been framed applicable to all such conferences. Generally speaking, the rules adopted are published in the minutes of the particular conference, as was done, *e.g.*, in the case of the conference regarding the Codification of International Law, held at The Hague in 1930.<sup>1</sup> The Rules of Procedure of the Assembly of the League of Nations itself are shown in § 808.

§ 554. Lists of the more important congresses and conferences from the middle of the seventeenth century onwards were given in the former edition of this work; and in his further treatise, "International Congresses," from which many of the details in the present chapter have been drawn, the late Sir E. Satow dealt more fully with those held since the beginning of last century. It is not proposed in the present edition to recount these former proceedings, which in many cases have now but a historical value, but rather to give, by way of illustration, a few of the more important of the numerous conferences held within recent years.

#### PARIS PEACE CONFERENCE, 1919

§ 555. The usual preliminary of a treaty of peace is an armistice. On October 5, 1918, the German Government transmitted through the Swiss Government their request to the President of the United States to assist in the restoration of peace. The President, on October 23, sent the papers to the governments with which the United States was associated, with a suggestion that the military advisers should be asked to submit to the governments associated against Germany the necessary terms of such an armistice as would ensure to them the unrestricted power to enforce the details of the peace to which the German Government had agreed. On November 5, having received the necessary reply from the Allied governments, he informed the German Government that Marshal Foch had been authorised to receive properly accredited representatives of the German Government and to communicate to them the terms of an armistice.

<sup>1</sup> Document C. 351, M. 145, 1930 V.

During the days immediately preceding, Marshal Foch had discussed the terms of an armistice with the generals of the Allies, and the naval authorities had added suggestions. Then a meeting of the Supreme Council of the Allies, together with Colonel House (United States), MM. Venizelos (Greece), Vesnitch (Bulgaria), Marshal Foch, Admiral Wemyss, Generals Sir H. Wilson, Bliss (United States) and de Robilant (Italy), was held at Versailles on October 31. On November 2 M. Clemenceau raised the question of adding the words "reparation of damages." The Belgian, Italian and British representatives thought the subject out of place in an armistice convention, but it was nevertheless agreed to. Then the French Minister of Finance proposed to preface those words by the addition of: "With the reservation of all ulterior claims and reclamations on the part of the Allies and the United States" (*sous réserve de toutes revendications et réclamations ultérieures de la part des Alliés et des États-Unis*). This was likewise adopted. On November 4 the consideration of the terms was resumed, and the text of an article respecting surface ships adopted. Thereupon on November 5 the Allies informed the President of the United States of their willingness to make peace on the terms laid down in his address of January 8, 1918 (the Fourteen Points), and the principles of settlement enunciated in his subsequent addresses. On clause 2, relating to what is usually described as the freedom of the seas, they reserved to themselves complete freedom in the Peace Conference, and they declared that by the restoration of invaded territories they understood compensation made by Germany for all damage done to the civilian population of the Allies and their property by the aggression of Germany by land, by sea, and from the air.

On November 8 the two delegations met at Rethondes station in the forest of Compiègne. The German Government intimated their acceptance on the 10th, and signature of the armistice convention followed at 5 a.m. on November 11. It came into force at noon that day (11 a.m. Greenwich time).<sup>1</sup>

Thereafter, the Five Great Powers assumed the exclusive direction of the proceedings (just as at Vienna in 1815). Up to the time of delivery of the terms of peace to the German delegates on May 7, 1919, the meetings of the Plenum, *i.e.* the representatives of the Allied and Associated Powers, were

<sup>1</sup> Tardieu, *La Paix*, 66-81. *Geschichte des Waffenstillstands*, published by the German Government, and Mermeix, *Les négociations secrètes et les quatre Armistices*, Paris, 1921; also *Die deutsche Waffenstillstands-Kommissions-Bericht über ihre Tätigkeit vom Abschluss des Waffenstillstandes bis zum Inkrafttreten des Friedens*. Charlottenburg, 1920.

eight in number, besides a secret session. At the first of these plenary assemblies the Prime Minister of France was chosen permanent chairman, in accordance with precedent. A principal secretary-general and five others bearing the title of "secretary" were appointed for the respective Great Powers, besides four vice-presidents. The Great Powers began their private and confidential conversations before any general meeting of plenipotentiaries.

At the plenary session of January 25, five resolutions were submitted and adopted, appointing committees or commissions.<sup>1</sup>—1. To work out the details and constitution of the proposed League of Nations; 2. To inquire into and report on the responsibility of the authors of the war and the enforcement of penalties; 3. To examine and report on the amount which the enemy countries ought to pay by way of reparation and what they were capable of paying; 4. To inquire into the conditions of employment from the international aspect; 5. To inquire into and report on the international control of ports, waterways and railways. There was a general discussion before these resolutions were adopted, and it was agreed that representatives of minor powers with special interests should meet to elect members of these commissions in addition to those nominated by the Five Great Powers.<sup>2</sup> There was also a drafting commission. Minutes of these meetings were kept and printed from stenographic notes.

Although each of the Great Powers was entitled to five plenipotentiaries, and each of the minor Powers to two,<sup>3</sup> the Supreme Council which actually carried on the main work of the conference was a much smaller body. It consisted at first of the President of the United States and the Prime Ministers of France, Great Britain and Italy, with their ministers for foreign affairs, and the Japanese ambassadors at Paris and London, ten in all. This lasted from January 12 till March 24. From that time onward it was reduced to a council of four, the President and the three Prime Ministers. During the absence of the Italian delegation from April 24 to May 5 it became a council of three. Of their very numerous daily conversations it seems that stenographic records<sup>4</sup> were made in French and English, and sometimes, as in matters

<sup>1</sup> 66th Congress 1st session, Document No. 106, *Hearings before the Committee on Foreign Relations of the United States Senate*, 300.

<sup>2</sup> List of members, *ibid.*, 309.

<sup>3</sup> See the Preamble to the Treaty of Versailles in *History of the Peace Conference of Paris*, Temperley, v. iii. 105.

<sup>4</sup> *Hearings before the Committee on Foreign Relations of the United States Senate*, 1235.

concerning Austria, they were also translated into Italian.<sup>1</sup> A distinction seems to have been made between stenographic reports and *procès-verbaux*. Copies of the latter, which were sometimes very detailed, were supplied to the plenipotentiaries. The record of a discussion on January 16 regarding the situation in Russia has been printed, besides one of January 21.<sup>2</sup> On the latter occasion, in addition to the members of the council of ten, there were present twelve other persons, including three out of the five secretaries of the delegations and the official interpreter. Under such circumstances it was not possible to prevent the leakage of information that the principals wished to keep secret, and this led to measures of restriction. The memoranda of the debates on the League of Nations were not taken down in shorthand. They were regarded as confidential, and so, it may be presumed, were those of other sittings of the Supreme Council. By January 25 one of the delegates from Japan, besides three ambassadors, had arrived. But the protocol of the plenary sitting of that date was signed by M. Clemenceau and the six secretaries alone. The third plenary meeting, at which a draft Covenant of the League of Nations was read, was held on February 14. The commission on that subject met on April 10 and 11,<sup>3</sup> and definitely agreed on the text to be presented to the conference, which was done at the fifth plenary sitting on April 28.

The United States Secretary of State was appointed chairman of the Commission on the Responsibility of the Authors of the War and the Enforcement of Penalties,<sup>4</sup> and its work was divided among three sub-commissions.

The so-called Council of Four, representing the Principal Allied and Associated Powers, was in reality a Council of Five, as it included a Japanese member.<sup>5</sup> The matters discussed were summarised, and the conclusions arrived at were recorded in a *procès-verbal*, copies of which were distributed within twenty-four hours, and it was open to the members to correct anything it might contain. Every decision required the unanimous consent<sup>6</sup> of the Peace Conference, which never decided any question by a majority vote. In the commission on the League of Nations voting was resorted to, on at least one occasion.

By the Treaty of Versailles the territories renounced by Germany were to be apportioned by the Principal Allied and

<sup>1</sup> *Hearings before the Committee on Foreign Relations of the United States Senate*, 171.

<sup>2</sup> *Ibid.*, 1240.

<sup>3</sup> *Ibid.*, 270.

<sup>4</sup> *Ibid.*, 314.

<sup>5</sup> *Ibid.*, 521.

<sup>6</sup> *Ibid.*, 527.

Associated Powers (Art. 118), just as, by the separate articles of the Treaty of Paris of May 30, 1814, the disposition of the territories ceded by France was left to the Four Powers.

The Economic Commission was composed of delegates of the Great Powers, representatives of certain of the minor Powers being associated with them from time to time. The work was shared among sub-committees, which considered different branches of the subject.<sup>1</sup> The members met from time to time to compare notes, and the whole of the economic clauses were gone over and subjected to criticism by this group. The sub-commissions sat frequently and towards the end almost continuously, and when they arrived at a conclusion they presented a report to the commission for approval, amendment, or rejection. When finally adopted these reports were put together to form a whole. Then the reports of the commission were presented to the Supreme Council and were accepted. After that they were handed over to the drafting commission,<sup>2</sup> and emerged substantially in the form in which they appear in the text of the treaty. The decisions of the commission were taken unanimously.

The records of the Financial Commission were not stenographic, for there was a good deal of discussion not necessary to put on the minutes. The latter, containing the substance of the agreements arrived at, were kept in French and English, were presented to the members, and at each subsequent meeting were approved with whatever alterations were necessary.

In addition to the committees already mentioned, a Supreme Economic Council was formed, territorial commissions were set up for Czechoslovakia, for Poland, for Roumania and Yugoslavia, for Greece and Albania, for Belgium and Denmark, besides military, naval and air commissions. Perhaps the most important of all was the drafting commission, on which the five principal Powers were represented. Subordinate to this were the economic and financial drafting commissions. Besides this machinery, a Council of Five was formed out of the ministers for foreign affairs. This was the organ for the insertion in the treaty of clauses omitted by oversight, and, while the Four were occupied with the negotiation of the treaty with Germany, it was able to proceed with the discussion of the Austrian treaty.

The whole treaty with Germany having thus been framed, there was in the first place the exchange of credentials on

<sup>1</sup> *Hearings before the Committee on Foreign Relations of the United States Senate*, 9.

<sup>2</sup> *Ibid.*, 12.

May 1, next the delivery of the terms to the German delegates on May 7. This was followed by discussion between the parties, in the shape of notes delivered by Germany and answered by the Allies. Finally, on May 30, Germany put in a lengthened criticism of the draft, which was answered on June 16 by a note signed by the president of the conference, covering the "Reply of the Allied and Associated Powers to the observations of the German delegation on the conditions of peace."<sup>1</sup>

Some minor concessions were made, but the original text was on the whole maintained, and signature followed on June 28, together with that of a supplementary protocol,<sup>2</sup> indicating precisely the conditions in which certain provisions of the treaty were to be carried out. The deposit in Paris of the required number of instruments of ratification did not take place till January 10, 1920, being impeded mainly by the difficulties encountered by the Allies in obtaining satisfaction from Germany for failure to execute the provisions of the armistice of November 11, 1918, of which the chief violation was the scuttling of the German fleet at Scapa Flow on June 21, 1919, a week before the signature of the treaty of peace. On November 6 the Allies sent a note to Germany, accompanied by a protocol relating to the unexecuted provisions of the armistice of which they required the signature before the Peace Treaty could come into operation. It was not till January 10 that the German Government was induced to sign this document, and on the same day the deposit of ratifications was accomplished at the Ministry of Foreign Affairs at Paris in a plenary sitting of the signatories of the treaty.

After the signature of the Treaty of Peace with Germany the Council of Four was broken up, and its members, except of course the French member, left Paris. The current business in connection with the execution of its provisions, and the framing of the treaties with the other belligerents, was committed to the five ministers for foreign affairs. This council also came to an end after the deposit of ratifications, and was succeeded by a Conference of the Ambassadors of the Allies accredited at Paris.

The Treaty of Versailles embraced an extensive series of provisions. The duty of enforcing their execution devolved

<sup>1</sup> See *Reply of the Allied and Associated Powers*, 1919 [Cmd. 258], also *International Conciliation*, November, 1919, No. 144. For the *Comments by the German Delegation on the Conditions of Peace*, see No. 143 of the same publication.

<sup>2</sup> Temperley, *A History of the Peace Conference of Paris*, iii. 345.

on various constituted bodies. The boundaries of the new states had to be delimited ; in some cases a plebiscite had to be resorted to in order to determine the line of partition. Of a permanent nature was the constitution of the League of Nations and the organisation for the international regulation of labour conditions. The international commissions for the traffic on the Elbe, Oder, Niemen, Danube, Rhine and Moselle presented the same character. The clearing offices and mixed arbitral tribunals set up under the economic clauses were provisional, also the inter-allied commissions of control for the execution of the military, naval and air clauses providing for disarmament, and the inter-allied Reparation Commission.

Although the uninterrupted presence of the Prime Ministers in Paris was no longer considered imperative after the signature of the Treaty of Versailles, they still continued to meet from time to time in France, Great Britain and elsewhere for the discussion of matters of common concern arising out of that treaty and for the consideration of other treaties with enemy belligerents. No leading representative of the United States was present at these gatherings until President Harding authorised the attendance of the American ambassador at Paris in August 1921. Germany maintained a Peace Delegation in Paris, the head of which corresponded with the chairman or the secretary-general of the Supreme Council and with the Council of Ambassadors. The decisions arrived at by the Supreme Council on each occasion were made public in the form of official *communiqués*.<sup>1</sup>

#### WASHINGTON CONFERENCE, 1921-2

§ 556. Invitations were addressed by the United States Government on August 11, 1921, to Great Britain, France, Italy and Japan, for a Conference on the Limitation of Armament, to be held in Washington on November 11, 1921, in connection with which Pacific and Far Eastern questions would also be discussed ; to China, to participate in the latter discussion ; and also on October 4, to Belgium, the Netherlands and Portugal. Acceptances were received from all.

The conference opened on November 11, 1921, the respective countries being represented as follows :

*United States* : Mr. C. E. Hughes, Secretary of State ; Mr. H. C. Lodge, Senator ; Mr. O. W. Underwood, Senator ; Mr. Elihu Root, former Secretary of State and Senator.

<sup>1</sup> *Parliamentary Paper, Misc.*, No. 15, 1921. *Protocols and Correspondence* [Cmd. 1325].

*Belgium* : Baron de Cartier de Marchienne, ambassador at Washington.

*Great Britain* : Mr. A. J. Balfour, Lord President of the Privy Council ; Baron Lee of Fareham, First Lord of the Admiralty ; Sir A. Geddes, ambassador at Washington.

*Canada* : Sir R. L. Borden, Prime Minister.

*Australia* : Mr. G. F. Pearce, Minister.

*New Zealand* : Sir J. W. Salmond, Judge of the Supreme Court.

*South Africa* : Mr. A. J. Balfour.

*India* : Mr. V. S. S. Sastri, Member of the Indian Council of State.

*France* : M. Briand, President of the Council ; M. Viviani, former President of the Council ; M. Sarraut, Minister for the Colonies ; M. Jusserand, ambassador at Washington.

*Italy* : M. C. Schanzer, Senator ; M. V. Rolandi-Ricci, ambassador at Washington ; M. F. Meda.

*Japan* : Baron Kato, Minister for the Navy ; Baron Shidehara, ambassador at Washington ; Mr. M. Hanihara.

*China* : Mr. S. A. Sze, envoy at Washington ; Mr. V. K. Wellington Koo, envoy at London ; Mr. Chung-Hui Wang ; Mr. Chao-chu-Wu.

*Netherlands* : Jonkheer H. A. van Karnebeek, Minister for Foreign Affairs ; Jonkheer Beelaerts van Blokland, envoy ; Dr. E. Moresco.

*Portugal* : Viscount d'Alte, envoy at Washington ; M. E. J. de Carvalho e Vasconcellos.

Each delegation was accompanied by a large staff of special advisers, technical experts, secretaries, clerks, etc.

The agenda for the conference were thus framed :

### *Limitation of Armament*

One.—Limitation of Naval Armament, under which shall be discussed :

- (a) Basis of limitation.
- (b) Extent.
- (c) Fulfilment.

Two.—Rules for control of new agencies of warfare.

Three.—Limitation of land armament.

### *Pacific and Far Eastern Questions*

One.—Questions relating to China.

First : Principles to be applied.

Second : Application.

Subjects :

- (a) Territorial integrity.

- (b) Administrative integrity.
- (c) Open door.—Equality of commercial and industrial opportunity.
- (d) Concessions, monopolies or preferential economic privileges.
- (e) Development of railways, including plans relating to Chinese Eastern Railway.
- (f) Preferential railroad rates.
- (g) Status of existing commitments.

Two.—Siberia. (Similar headings.)

Three.—Mandated islands. (Unless questions earlier settled.) Electrical communications in the Pacific.

Under the heading of "Status of Existing Commitments," it is expected that opportunity will be afforded to consider and to reach an understanding with respect to unsettled questions involving the nature and scope of commitments under which claims of rights may hereafter be asserted.

The places of the plenipotentiaries at the hollow square of tables were arranged according to the diplomatic rule governing such matters. The United States Secretary of State had his seat at the middle of the top table, with the other three United States delegates on his right ; at his left were the British delegates ; next on the right came the French delegates ; next on the left came the Italian delegates, and last on the right came the Japanese delegates. At the subsequent sessions the seats at the top of the table were moved one place to the left, so that the Secretary of State occupied a seat to the left of the middle, and so a seat was assigned to one of the French delegates at the right end of the top row.

Apart from the public sessions, the main part of the business was transacted in committees. These were the Committee on Limitation of Armament and the Committee on Pacific and Far Eastern questions. The former, composed of the plenipotentiary delegates of the Five Great Powers, held twenty-one sittings, the latter, composed of the plenipotentiary delegates of the nine Powers that took part in the conference, thirty-one sittings. Each had power to appoint such sub-committees as it might from time to time deem advisable.

At the plenary sessions, practically every speech was repeated in French. Records of the speeches made in committees were kept ; official *communiqués* in a condensed form were published.

Besides the secretary-general of the conference there were

six other secretaries and assistant secretaries, drawn from the United States service, two interpreters, etc.

At the first plenary session an introductory speech was delivered by the President of the United States, printed copies of which in French and English were laid on the desks of the delegates. The President having withdrawn after delivering his speech, the British first delegate proposed that the United States Secretary of State should be permanent head of the conference, in accordance with the usual practice. This being agreed, the Secretary of State, in his capacity as chairman, delivered a speech in which he proposed a scheme for the execution of heading *one* of the section Limitation of Naval Armament of the agenda, and briefly mentioned the second part of the agenda, Pacific and Far Eastern questions. This he followed by a concrete proposal for the limitation of the United States, British and Japanese navies.

The Chairman then proposed as secretary-general Mr. J. W. Garratt, a former minister plenipotentiary, and that the heads of missions of the Five Great Powers, or such representative as each Power might respectively select for the purpose, should constitute a committee on programme and procedure with respect to the limitation of armament ; further that the heads of missions of the Five Powers and of the other Powers invited to take part in the discussion of Pacific and Far Eastern questions, or such representatives as they might respectively designate, should form a committee on programme and procedure for the discussion of those questions. He suggested that the credentials of the delegates should be left with the secretary-general at the close of the session. These proposals were agreed to.

At the second session the record of the first session, having been previously distributed to the delegates for any corrections necessary, was unanimously approved. This procedure was followed at each subsequent session. The British and Japanese first delegates intimated their acceptance in principle of the United States proposals, and speeches followed from the Italian and French leading delegates. Further discussion was carried on in the committee, aided by a sub-committee of experts.

At the third plenary session the French Prime Minister explained the French view with regard to land armament, and was followed by the British, Italian and United States representatives. It came ultimately to be recognised that an agreement on this question was impossible. Two days later the committee which had this matter in hand had a private general discussion on subjects relating to it and to new agencies

of warfare. These were referred to the sub-committee, consisting of the heads of delegations, with instructions to bring in an order of proceeding with regard to those subjects, and with power to appoint sub-committees to deal with the questions relating to poison gas, aircraft, and rules of international law. After this the matter of land armament disappeared from the agenda, and the conference resumed the discussion of the limitation of naval armament. The important point to be settled was the ratio to be fixed between the naval strengths of the United States, Great Britain and Japan, and concurrently those of France and Italy. These were finally, after much discussion, fixed at 5, 5, 3, 1·75 and 1·75 for the Five Powers. The discussion on the tonnage of submarines, carried on in committee, led to no agreement, nor was any arrived at on the tonnage of other auxiliary craft.

An important part of the agenda consisted of questions relating to China, some of them interesting Japan in particular. The questions at issue between those two Powers were adjusted with the help of the United States Secretary of State and the British first delegate, in thirty meetings. These matters were disposed of by two treaties and various resolutions.

The results achieved at the conference may be summarised thus :

(1) The treaty between the United States, the British Empire, France, Italy and Japan, limiting naval armament, signed February 6, 1922, was the most important. It confined the size of battleships thereafter constructed to 35,000 tons, and the calibre of guns to 16 inches, and specified the existing battleships which might be retained by each of the contracting Powers. All other battleships possessed by the United States, Great Britain, or Japan were to be scrapped, in accordance with the rules laid down in the treaty. There were also rules governing the replacement of ships more than twenty years old. The total tonnage to be retained by the United States was 525,850 tons, by the British Empire 558,950 tons, by France 221,170 tons, by Italy 182,800 tons, by Japan 301,320 tons.

Article 23 provided for the treaty remaining in force until December 31, 1936, and in case none of the contracting Powers should have given notice two years before that date of its intention to terminate the treaty, then until the expiration of two years from the date on which such notice might be given.

(2) A treaty between the same Powers designed to render more effective the rules adopted by civilised nations for the protection of the lives of neutrals and non-combatants at sea

in time of war, and to prevent the use in war of noxious gases and chemicals.<sup>1</sup>

(3) A treaty between the same Powers relating to their insular possessions and insular dominions in the Pacific Ocean, was not included among the agenda. It was designed to terminate and supersede the Anglo-Japanese alliance, of which the necessity was recognised as no longer existing. The discussion of this compact was carried on by the heads of the delegations concerned. A doubt having arisen with respect to the words "insular possessions and insular dominions," it was found necessary to conclude a supplementary treaty defining the application of these terms in relation to Japan.

(4) A treaty between the United States, Belgium, British Empire, China, France, Italy, Japan, the Netherlands and Portugal, relating to principles and policies to be followed in matters concerning China.

(5) A treaty between the same countries relating to the Chinese customs tariff.

A number of resolutions were also adopted :

(i) For a commission to be constituted to consider amendments of the laws of war.

(ii) Excluding from the purview of the above commission rules or declarations relating to submarines or the use of noxious gases and chemicals already adopted by the Powers in this conference.

(iii) Regarding a Board of Reference for Far Eastern questions.

(iv) Regarding extritoriality in China, under which a commission was to be established in China.

(v) Regarding foreign postal agencies in China, and undertaking that their withdrawal should be effected not later than January 1, 1923.

(vi) Regarding armed forces in China, by which the Powers declared their intention to withdraw their armed forces on duty in China, whenever China should assure the protection of the lives and property of foreigners in China.

(vii) Regarding radio stations in China, with accompanying declarations.

(viii) Regarding the unification of railways in China, with accompanying declaration by China.

(ix) Regarding the reduction of Chinese military forces.

(x) Regarding existing commitments of China or with respect to China, *i.e.* the political and other international

<sup>1</sup> This treaty failed to secure the number of ratifications required to bring it into force.

obligations of China and of the several Powers in relation to China.

(xi) Regarding the Chinese Eastern Railway, approved by all the Powers, including China.

(xii) Regarding the Chinese Eastern Railway, approved by all the Powers other than China.

There was also signed by China and Japan a treaty settling outstanding questions relative to Shantung, which had been pending ever since China refused to sign the Treaty of Versailles, Article 156 of which provided that Germany should renounce in favour of Japan all her rights, title and privileges which she acquired in virtue of her treaty with China of March 6, 1898, and disposing of all other arrangements relative to the province of Shantung, together with all Japanese rights of whatever kind relating to the Tsingtao-Tsinanfu railway. The announcements in Article 1 that Japan would restore to China the former German leased territory at Kiaochow, and in section iii with regard to the withdrawal of Japanese troops, were followed by the British First Delegate's declaration of the British Government's intention to hand back Wei-hai-wei to China. This was confirmed by an exchange of letters of February 3 between Mr. Balfour and Mr. Sze. France also declared in committee her willingness to restore Kwang-chow-wan to China under certain conditions.

The closing session of the conference was held on February 6, 1922, when the President of the United States delivered a farewell address to the delegates.

Siberia, Mandated Islands and Electrical Communications in the Pacific, with which subjects the agenda terminated, do not seem to have been discussed by the whole conference. But a convention between the United States and Japan, relative to the Island of Yap, was arrived at by those Powers outside the conference, and was signed February 11, 1922. It appears to come under the last two subjects on the agenda.<sup>1</sup>

#### GENOA CONFERENCE, 1922

§ 557. This conference originated in a resolution of January 6, 1922, approved at a meeting of the Supreme

<sup>1</sup> Authorities : Senate Document No. 126, 67th Congress, 2nd Session ; Papers published by the American Association for *International Conciliation*, Nos. 169 of December 1901 and 172 of March, 1922 ; Mark Sullivan, *The Great Adventure at Washington*, London, 1922 ; Sir John N. Jordan, Article in the *Quarterly Review* for July 1922 ; White Paper presented to Parliament [Cmd. 1627], Miscellaneous, No. 1 (1922), entitled *Conference on Limitation of Armament (Treaties, Resolutions, etc.)*.

Council at Cannes, to the effect that the Allied Powers were unanimously of opinion that an Economic and Financial Conference should be summoned, to which all European countries, including Germany, Russia, Austria, Hungary and Bulgaria, should be invited ; this they regarded as an urgent and essential step towards the economic reconstruction of Central and Eastern Europe, and the hope was expressed that the Prime Ministers of every nation would attend in person. Fundamental conditions were stated broadly as follows :

1. Nations can claim no right to dictate to each other regarding the principles on which they are to regulate their system of ownership, internal economy, and government. It is for every nation to choose for itself the system which it prefers in this respect.

2. Before, however, foreign capital can be made available to assist a country, foreign investors must be assured that their property and their rights will be respected and the fruits of their enterprise secured to them.

3. The sense of security cannot be re-established unless the governments of countries desiring credit freely undertake (*a*) that they will recognise all public debts and obligations which have been or may be undertaken by the state, by municipalities, or by other public bodies, as well as the obligation to restore or compensate all foreign interests for loss or damage caused to them where property has been confiscated or withheld ; (*b*) that they will establish a legal and juridical system which sanctions and enforces commercial and other contracts with impartiality.

4. An adequate means of exchange must be available, and generally, there must be financial and currency conditions which afford sufficient security for trade.

5. All nations should undertake to refrain from propaganda subversive of order and the established political system in other countries than their own.

6. All countries should join in an undertaking to refrain from aggression against their neighbours.

If, in order to secure the conditions necessary for the development of trade in Russia, the Russian Government demands official recognition, the Allied Powers will be prepared to accord such recognition only if the Russian Government accepts the foregoing stipulations.

The main purpose, it may be said, was to bring about, if possible, harmonious relations between Russia and the other nations of Europe.

It was also agreed that the conference should meet at Genoa ; terms of invitation to Russia were drawn up ; and it was decided that invitations should be addressed to all European countries and to the United States. An outline of the agenda was approved, a committee being set up to prepare

a more detailed programme and to draft resolutions, while a Press notice was issued setting out the general objects and conditions of the proposed conference, which included the establishment of a basis of stable and enduring peace, and the discussion of financial and economic questions, with a view of reaching a satisfactory settlement of all such matters.

The invitations were issued by the Italian Government, in whose territory the conference was to be held, and in April 1922 the delegates assembled at Genoa, the following countries taking part : Albania, Austria, Belgium, British Empire, with Canada, Australia, New Zealand, South Africa, and India, Bulgaria, Czechoslovakia, Denmark, Estonia, Finland, France, Germany, Greece, Holland, Hungary, Iceland, Italy, Japan, Latvia, Lithuania, Luxemburg, Norway, Poland, Portugal, Roumania, Russia, Spain, Sweden, Switzerland and Yugoslavia. The United States did not participate.

At the opening meeting in the Palazzo Reale on April 10 the chair was taken provisionally by Signor Facta, Prime Minister of Italy, who welcomed the representatives, and read a cordial message from the King of Italy. Mr. Lloyd George, Prime Minister of Great Britain, then proposed the appointment of Signor Facta as president of the conference. Monsieur Barthou, head of the French Delegation, seconded, and the motion being carried unanimously, Signor Facta delivered his inaugural address as president, being followed by the representatives of all the more important states. Some little friction arose at this meeting between the French and Soviet delegates regarding the scope of the intended discussions, but the president closed the matter by declaring that the Cannes resolutions formed the basis, which the countries assembled had agreed to.

Four commissions were then set up under the following heads : Political, Financial, Economic and Transport, to deal with all respective questions. These in turn set up sub-commissions to deal with the special items. The general secretariat was conducted by Italy, at whose invitation the conference had met. The rules of procedure were as follows, and show generally the manner in which the work of the conference was carried on :

Art. 1. *Delegates*.—The International Economic Conference convened at the invitation of the Italian Government on behalf of the Powers represented at the Cannes Conference, consists of plenipotentiary delegates appointed by the states invited to attend. The numbers of these delegates is five for the Powers which convened the Conference, Germany and Russia, and two for the

remaining Powers. Each delegation will have one vote only. Written notice of the appointment of the delegates must be sent to the Italian Government or to the President of the Conference.

Art. 2. *Deputies*.—Each state represented at the Conference is entitled to appoint deputies of the same number as its plenipotentiary delegates.

Art. 3. *Technical Advisers*.—The plenipotentiary delegates of each state may be accompanied by technical advisers. Written notice of the appointment of these advisers must be sent to the Italian Government or to the Secretary-General of the Conference.

Art. 4. *Credentials*.—All plenipotentiary delegates are requested to hand in their credentials at the earliest possible moment to the Secretary-General's office. A committee for the verification of credentials, consisting of one delegate from each of the Powers convening the Conference, will at once proceed to verify the credentials of the delegates.

Art. 5. *Order of Precedence*.—Votes will be cast according to the Italian alphabetical order of the names of the Powers.

Art. 6. *Bureau of the Conference*.—The appointment of the regular President will be made at the first meeting. In the absence of the President, the duties of his office will be performed by the head of the delegation to which the President belongs. The Prime Minister of Italy will provisionally act as President of the Conference until the regular President has been appointed. The control of the debates of the Conference will be exercised by the President. The President is empowered by the Assembly to take any measures which he may consider necessary for the conduct of the debates. The President, together with presidents of the Commissions, will form the bureau entrusted with the duty of drawing up the agenda and with the consideration of all questions of procedure.

Art. 7. *The Secretariat*.—The Secretariat will be directed by an Italian Secretary-General, assisted by the chiefs of the secretariats of the delegations of the Powers convening the Conference. The Secretariat is placed under the control and authority of the President. The secretaries designated by the delegations to follow the work of the Conference and to collaborate in drafting the minutes will also be attached to the Secretariat. The Secretariat is especially entrusted with the duty of receiving communications and translating the documents, reports, and resolutions bearing on the labours of the Conference, translating the speeches delivered during the meetings, drafting and communicating the minutes of the meetings, and, generally, of performing any tasks which the Conference may see fit to assign to it. Members of the Conference will always have access to the records.

Art. 8. *Publicity of Proceedings*.—The publicity of the proceedings will be provided for by means of official communiqués drawn up by the Secretariat, with the approval of the President of

the Conference. The plenary meetings only will be public, except when otherwise notified. Members of the public will be admitted on production of cards issued by the Secretariat-General.

Art. 9. *Commissions*.—Commissions will be formed to consider the questions on the agenda. Each delegation may appoint one delegate to sit on each of the commissions; the Powers which have five delegates at the Conference will appoint two delegates each for this purpose. The same delegate may sit on several commissions. All the commissions will be empowered to divide themselves into sub-commissions.

Art. 10. *Official Languages*.—The official languages of the Conference are Italian, French and English. Speeches delivered in one of these three languages will be translated into the other two by an interpreter attached to the Secretariat. Any delegate speaking in another language will have to make provision for the translation of his speech into Italian, French or English. All documents, proposals and reports communicated to members of the Conference by the President or by the Secretariat will have to be drawn up in Italian, French and English. Any delegate will be entitled to distribute documents written in other languages than Italian, French or English, but the Secretariat will not be required to provide for their translation and printing.

Art. 11. *Documents, Proposals, etc.*—(1) Documents, proposals, etc., must be communicated in writing to the President, who will cause copies to be distributed to the delegates. Documents and proposals can only be submitted by or on behalf of a plenipotentiary delegate. (2) Except in the case of proposals relating to questions on the agenda, or which arise out of the debates, delegates who desire to submit proposals must hand them in twenty-four hours in advance in order to facilitate their discussion. Exception may, however, be made to this rule in the case of amendments or secondary questions. (3) Petitions, memoranda, and documents addressed to the Conference and emanating from any other person than a plenipotentiary delegate must be handed in to the Secretariat, which will communicate them to the President's bureau. All these papers will be preserved in the records of the Conference.

Art. 12. *Minutes of the Meetings*.—The provisional minutes of the meetings, drawn up by the Secretariat, will be distributed to the delegations as early as possible. The minutes, with any amendments and corrections which the delegates may make, must be returned to the Secretary-General's office within twenty-four hours after distribution. In order to expedite the proceedings, this distribution will be considered as equivalent to the reading of the minutes at the opening of each meeting. If no correction is asked for by the plenipotentiary delegates the text, as distributed, will be considered as having been approved and will be placed in the records. If a correction affecting the substance of a report is asked for, the President will read the proposed modification at the opening of the next meeting.

The Plenary Conference met on three occasions: on April 10, May 3 and May 19. By the time of the second meeting the Financial and Transport Commissions had completed their reports, while the Economic Commission furnished its report before May 19. The reports furnished by these committees were described by the president as real and positive contributions to the re-building of the world. But the work of the First Commission on the political questions involved proved more difficult, and as the findings of the other three commissions depended for their accomplishment on a solution of these questions no final results could be achieved at the conference. In the meantime the conclusion at Rapallo on April 16 of a treaty between Germany and Russia mutually renouncing as between themselves reparation claims, and agreeing to resume normal relations, clouded the outlook; further difficulties developed from differences of view between some of the Allied Powers regarding claims for the restitution of privately-owned property in Russia. In such circumstances the conference concluded on May 19 by agreeing that the further consideration of the outstanding differences between the Soviet Government and the other governments represented should be delegated to a mixed commission of experts which would meet at The Hague in June 1922.

At the final meeting on May 19 a resolution of thanks was adopted, on the proposal of Mr. Lloyd George, to the president of the conference; to Signor Schanzer, the president of the political sub-commission; and to the Italian people for their hospitality.<sup>1</sup>

The proposed mixed commission duly met at The Hague and sat from June 26 to July 20, 1922, without, however, achieving any further useful result.

#### LOCARNO CONFERENCE, 1925

§ 558. While the conference which assembled at Locarno on October 5, 1925, originated in certain proposals made by the German Government in a memorandum which they communicated to the French Government on February 9, 1925,<sup>2</sup> the efforts of previous years had had an appreciable effect in paving the way for the entertainment of some definite means of bringing about a solution of the political problems involved.

<sup>1</sup> Authority: J. Saxon Mills, *The Genoa Conference*.

<sup>2</sup> *Parliamentary Paper, Misc.*, No. 7, 1925; see also § 102.

The German memorandum, in considering the various forms which a pact of security might take, suggested, as possible methods, specific engagements into which the Powers concerned in the inviolability of the existing territorial status on the Rhine might enter, coupled with treaties of arbitration for the peaceful settlement of disputes.

These proposals received the careful consideration of the French, British and Belgian Governments, and on June 16 the French Government addressed a reply to the German Government, in which, in agreement with their allies, they expressed a general approval of the motives underlying the German proposals, but asked for a fuller explanation of the views of that government on a number of points. In particular, emphasis was placed on the necessity of Germany entering the League of Nations, of the proposed pact in no way modifying the settlements made by the Treaty of Versailles, of Belgium being included as a party to the pact, and of the proposed arbitration treaties being of the most comprehensive kind.

The correspondence proceeded until August 27, when the negotiations reached a stage at which it was proposed that a meeting of experts of Belgium, France, Great Britain and Germany should be held in London, in order to afford the German experts an opportunity to become acquainted with the views of the Allied experts as regards the legal and technical aspects of the problems under discussion. At this meeting, which took place in London from September 1 to 4, views were exchanged, and, as the outcome, a note was addressed to the German Government on September 15, on behalf of Belgium, France and Great Britain, to the effect that it appeared to them that the nations concerned had a common interest in the negotiations being no longer postponed, and suggesting that a conference of the ministers for foreign affairs of the interested states should be held at an early date in neutral territory, preferably Switzerland. It was then arranged that the conference should take place at Locarno on October 5.

The conference accordingly met at Locarno on October 5, and lasted until October 16. The following were the principal representatives of the various states :

Germany : Dr. H. Luther, Chancellor ; Dr. C. Stresemann, Minister for Foreign Affairs.

Belgium : M. E. Vandervelde, Minister for Foreign Affairs.

France : M. A. Briand, President of the Council, Minister for Foreign Affairs.

Great Britain : Mr. A. Chamberlain, Principal Secretary of State for Foreign Affairs.

Italy : M. B. Mussolini, President of the Council of Ministers.

Poland : M. A. Skrzynski, Prime Minister, Minister for Foreign Affairs.

Czechoslovakia : Dr. E. Benes, Minister for Foreign Affairs.

The proceedings of the conference do not appear to have been governed by any strict rules of formality or procedure, and, as a result of the consultations, there were drawn up in the French language and initialled :

(1) A Treaty of Mutual Guarantee between Germany, Belgium, France, Great Britain and Italy.

(2) An Arbitration Convention between Germany and France.

(3) An Arbitration Convention between Germany and Belgium.

(4) An Arbitration Treaty between Germany and Poland.

(5) An Arbitration Treaty between Germany and Czechoslovakia.

The final protocol signed by the representatives on October 16, 1925, was as follows :

Les représentants des Gouvernements allemand, belge, britannique, français, italien, polonais et tchécoslovaque, réunis à Locarno du 5 au 16 octobre 1925, en vue de rechercher d'un commun accord les moyens de préserver du fléau de la guerre leurs nations respectives, et de pourvoir au règlement pacifique des conflits de toute nature qui viendraient éventuellement à surgir entre certaines d'entre elles,

Ont donné leur agrément aux projets de traités et conventions qui les concernent respectivement et qui, élaborés au cours de la présente conférence, se réfèrent réciproquement les uns aux autres :

Traité entre l'Allemagne, la Belgique, la France, la Grande-Bretagne et l'Italie (Annexe A).

Convention d'arbitrage entre l'Allemagne et la Belgique (Annexe B).

Convention d'arbitrage entre l'Allemagne et la France (Annexe C).

Traité d'arbitrage entre l'Allemagne et la Pologne (Annexe D).

Traité d'arbitrage entre l'Allemagne et la Tchécoslovaquie (Annexe E).

Ces actes, dès à présent paraphés *ne varietur*, porteront la date de ce jour, les représentants des parties intéressées convenant de se rencontrer à Londres le 1<sup>er</sup> décembre prochain, pour procéder, au cours d'une même réunion, à la formalité de la signature des actes qui les concernent.

Le Ministre des Affaires étrangères de France fait connaître qu'à la suite des projets de traités d'arbitrage ci-dessus mentionnés, la France, la Pologne et la Tchécoslovaquie ont également arrêté, à Locarno, des projets d'accords en vue de s'assurer réciproquement le bénéfice desdits traités. Ces accords seront régulièrement déposés à la Société des Nations, mais dès à présent M. Briand en tient des copies à la disposition des Puissances ici représentées.

Le Secrétaire d'État aux Affaires étrangères de Grande-Bretagne propose qu'en réponse à certaines demandes d'explications concernant l'article 16 du Pacte de la Société des Nations et présentées par le Chancelier et le Ministre des Affaires étrangères d'Allemagne, la lettre, dont le projet également est ci-joint (Annexe F), leur soit adressée en même temps qu'il sera procédé à la formalité de la signature des actes ci-dessus mentionnés. Cette proposition est agréée.

Les représentants des Gouvernements ici représentés déclarent avoir la ferme conviction que l'entrée en vigueur de ces traités et conventions contribuera grandement à amener une détente morale entre les nations, qu'elle facilitera puissamment la solution de beaucoup de problèmes politiques ou économiques conformément aux intérêts et aux sentiments des peuples et qu'en raffermissant la paix et la sécurité en Europe elle sera de nature à hâter d'une manière efficace le désarmement prévu par l'article 8 du Pacte de la Société des Nations.

Ils s'engagent à donner leur concours sincère aux travaux déjà entrepris par la Société des Nations relativement au désarmement et à en rechercher la réalisation dans une entente générale.

Fait à Locarno, le 16 octobre 1925.<sup>1</sup>

Signatures were appended to the treaties and conventions at the meeting at the Foreign Office, London, on December 1, 1925, the place and date, "Locarno, October 16, 1925," being preserved in the instruments signed. On the same occasion were also signed the treaties between France and Poland, and between France and Czechoslovakia, referred to in the final protocol, for mutual aid in the event of failure of the undertakings entered into by the former treaties.

The original signed treaties and conventions were deposited with the League of Nations, and the deposit of ratifications was effected at Geneva on September 14, 1926, and recorded by *procès-verbaux*, signed by the representatives of the states concerned.

#### GENEVA RED CROSS CONFERENCE, 1929

§ 559. On January 17, 1925, the Swiss Government addressed a circular note to states parties to the Geneva Red

<sup>1</sup> *Parliamentary Paper, Misc.*, No. 11, 1925.

Cross Conventions of 1864 or 1906, asking whether they were prepared to participate in a conference for the revision of the International Red Cross Convention of 1906, as well as for the elaboration of a code regarding the treatment of prisoners of war in amplification of the rules laid down in the Hague Convention (No. IV) of 1907. All countries having agreed to these proposals, the Swiss Government then requested their observations upon two draft conventions, intended to serve as bases for the discussions—that relating to the Red Cross Convention of 1906 having been adopted by the Eleventh International Red Cross Conference in 1923, and that relating to prisoners of war having been prepared by the International Red Cross Committee. Finally, on March 26, 1929, the Swiss Government announced that the conference would take place at Geneva on July 1, and asked to be furnished with the names of the representatives who would attend, it being understood that those authorised to sign would be provided with full powers. It was added that two general commissions would be set up, to sit alternately, one for each of the two subjects to be discussed.

On July 1, 1929, the conference met at Geneva. The representatives of forty-seven countries attended, including those of Great Britain, Australia, Canada, India, the Irish Free State, New Zealand and South Africa. Besides the delegates of the respective countries parties to the conventions of 1864 or 1906, the League of Nations, the Sovereign and Military Order of Malta, and the International Red Cross Committee sent representatives, who participated to an extent in the discussions.

The conference was opened on July 1, 1929, by M. Haab, President of the Swiss Confederation, whose speech, welcoming the delegates, was followed by that of M. Boissonas, President of the Geneva Council of State. Then, on the proposal of M. Riad, the Egyptian delegate, M. Dinichert, minister plenipotentiary, and head of the Swiss delegation, was appointed president of the conference. M. Dinichert having delivered his inaugural address, proposed M. Doude van Troostwijk, the senior Dutch representative, as vice-president, in consideration of the great part taken by Holland in the Peace Conferences of 1899 and 1907; and M. Paul des Gouttes (formerly assistant-secretary-general at the 1906 conference) as secretary-general, with a secretarial staff drawn mainly from the Swiss Foreign Office and the International Red Cross Committee, to which any of the delegations might attach one of their own secretaries. These proposals were adopted unanimously.

A committee set up to examine full powers reported that the representatives of 28 out of the 47 countries were so provided ; the committee was therefore maintained in existence in order to examine the others as received.

The rules of procedure were as follows :

Art. 1.—La Conférence est formée de tous les délégués des pays parties aux conventions de Genève du 22 août, 1864, et du 6 juillet, 1906. Ont été, en outre, conviée à s'associer aux travaux de la Conférence les délégués du Comité international de la Croix Rouge et de l'Ordre souverain de Malte.

Art. 2.—Les délégués plénipotentiaires remettent, aussitôt que possible, leurs pleins pouvoirs au Secrétariat de la Conférence. Une commission de vérification des pouvoirs, composée de huit membres, est élue par la Conférence ; elle fait immédiatement son rapport.

Art. 3.—Les membres des délégations peuvent tous prendre part aux délibérations. Dans les scrutins, chaque pays ne dispose que d'une voix. La Conférence vote par assis et levé, sauf dans le cas où elle décide que le vote doit se faire par appel nominal, ou, le cas échéant, au scrutin secret. Les décisions de la Conférence et des commissions sont prises à la majorité absolue des voix.

Art. 4.—Il est constitué deux commissions générales, dont l'un traitera la question de la révision de la Convention de Genève de 1906, et l'autre celle de l'élaboration d'une Convention relative au traitement des prisonniers de guerre. Ces commissions sont formées par les délégués de tous les pays représentés. Chaque commission a la faculté de constituer, à son tour, des sous-commissions. Les commissions générales siègent alternativement.

Art. 5.—La Conférence et chacune des commissions générales nomment un Président et un Vice-Président. Ces Présidents et Vice-Présidents, assistés du Secrétaire-Général, constituent le Bureau de la Conférence, chargé de tout ce qui concerne la marche générale des travaux. Le Président prononce l'ouverture, la clôture et, le cas échéant, la suspension des séances. Il assure l'observation du règlement, dirige les débats, donne la parole dans l'ordre où elle est demandée, déclare la discussion close, met les questions aux voix et proclame le résultat du scrutin. Si, au cours de la discussion d'une question, un délégué présente une motion d'ordre, le Président provoque une décision immédiate à ce sujet.

Art. 6.—Les textes des propositions et amendements sont communiqués par écrit au Président, qui en fait distribuer des exemplaires aux délégués, préalablement à toute discussion.

Art. 7.—Le Secrétariat de la Conférence est composé d'un secrétaire-général et de secrétaires. Il assure le service tant de la Conférence que des commissions et sous-commissions. Le secrétariat est chargé de recevoir, imprimer, et communiquer les propositions et rapports, de rédiger, imprimer et distribuer les procès-verbaux des séances, et, en général, d'assumer toutes les

tâches que la Conférence et les commissions jugent bon de lui confier.

Art. 8.—Il est publié : (1) un compte rendu in extenso des séances plénières de la Conférence et des séances des commissions générales ; (2) un compte rendu analytique des séances des sous-commissions. Ces comptes rendus sont imprimés et distribués aux délégués, autant que possible, dès la séance suivante de la Conférence, des commissions ou des sous-commissions. Les délégués qui auraient des corrections à apporter aux comptes rendus en informeront le secrétariat dans les vingt-quatre heures qui suivront la distribution de ces documents. Passé ce délai, les comptes rendus sont considérés comme définitifs.

Art. 9.—La langue française est adoptée comme langue officielle pour les discussions et les actes de la Conférence. Les discours qui seraient prononcés dans une autre langue seront résumés en français par les soins de la délégation à laquelle appartient l'orateur, le cas échéant, avec la collaboration du secrétariat.

Art. 10.—Le recueil des actes de la Conférence sera publié après la clôture de celle-ci par les soins du Secrétaire-Général.

Art. 11.—Le public est admis aux séances plénières de la Conférence et des commissions générales sur cartes distribuées par le secrétariat. La Conférence et les commissions peuvent, cependant, décider que certaines séances déterminées ne sont pas publiques.

As regards Article 9, certain of the British Empire delegations having expressed the wish that, as at League of Nations conferences, English should also be a language of the conference, the president maintained that, apart from that exception, French was the language of international conferences ; arrangements would, however, be made to present summaries of the proceedings in English.

The two commissions were thereupon constituted, the first of which was to deal with the revision of the Geneva Red Cross Convention of 1906, in the light of the experience derived from subsequent events, and the second to draw up the convention regarding the treatment of prisoners of war, in the light of similar experience. M. Dinichert was elected president of the first commission, and M. Scavenius, Danish minister at Berne, and head of the Danish delegation, president of the second.

The first commission, on which Mr. G. R. Warner, Counsellor, of the Foreign Office, represented Great Britain, began its work on July 2, and between that date and July 26, when it completed its labours, held twenty-one sittings, a number of questions of detail of particular difficulty being dealt with by sub-committees. The new convention, entitled "Convention de Genève pour l'Amélioration du sort des

Blessés et des Malades dans les Armées en campagne, du 27 juillet 1929," which resulted from the discussion of the terms of its thirty-nine articles in their various clauses, was approved by the conference at its fourth plenary session on July 26.

The second commission, on which Sir H. Rumbold, British ambassador at Berlin, represented Great Britain, met also on July 2, and completed its labours on July 24, after ten sittings, in the course of which two sub-committees were set up to deal with particular questions. The convention of ninety-seven articles resulting from the discussions, and entitled "Convention relative au Traitement des Prisonniers de Guerre, du 27 juillet 1929," was also approved at the fourth plenary session of July 26.

At the fifth and final plenary session on July 27, the Final Act (see § 617), together with the two conventions in their completed form, were presented for signature by the plenipotentiaries. The Final Act was signed by the representatives of thirty-eight countries, while thirty-three signed the two conventions, which by their terms remained open for signature by the remaining countries until February 1, 1930.

The president then delivered an address and declared the conference closed. The French plenipotentiary expressed the thanks of the representatives to the Swiss Government and the local authorities for their hospitality, and to the president of the conference for his eminent services, being followed by the United States plenipotentiary and by those of Italy and Egypt.<sup>1</sup>

<sup>1</sup> Authority : *Actes de la Conférence Diplomatique de Genève, Juillet 1929.*

## CHAPTER XXIII

### TREATIES AND OTHER INTERNATIONAL COMPACTS

TREATY, CONVENTION, ADDITIONAL ARTICLES, FINAL ACT,  
GENERAL ACT, CONCORDAT

§ 560. INTERNATIONAL compacts or engagements embrace a great diversity of subjects, and are placed on record in a variety of shapes. Consequently, they may be classed according to either matter or form.

§ 561. The principal forms they assume may be enumerated as follows :

1. Treaty.
2. Convention.
3. Additional Articles.
4. Final Act.
5. General Act.
6. Declaration.
7. Agreement.
8. Protocol.
9. Procès-verbal.
10. Exchange of Notes.
11. Modus Vivendi.
12. Compromis d'Arbitrage.
13. Réversale.
14. Ratification.
15. Accession.

§ 562. Of these, the terms Treaty and Convention appear formerly to have been mainly employed for compacts concluded between heads of states ; now the latter term is often used for compacts between governments. The terms Additional Articles and Final Act imply the existence of a treaty or convention, or more than one, which they supplement. A General Act does not differ essentially from a Treaty. Declarations, Agreements, Protocols, Exchanges of Notes,

and arrangements styled *Modus Vivendi* ordinarily relate to compacts between governments. *Réversales* and *Compromis d'Arbitrage* may be either between heads of states or governments. Ratification is the formal confirmation of a compact which has been signed, and Accession its formal acceptance by a non-signatory state. In this and the following chapters the use made of these terms will be more fully examined, and examples appended in each case.

§ 563. Which of the above forms shall be used in a particular case is partly a matter of usage, partly of convenience, partly also of choice. The treaty form is always adopted for the final result of peace negotiations, and for the compacts concluded on the occasion of marriages between members of Royal Families. The Treaties of Peace of 1919-20, like those of 1815, were supplemented by various conventions. International compacts relating to commerce and navigation, delimitation of boundaries, arbitration, extradition of criminals, and some other matters are found in the shape of treaties or conventions indifferently.

§ 564. According to García de la Vega,<sup>1</sup> it was the length of time for which a compact was concluded that should determine whether it was to be styled a treaty or a convention. But commercial arrangements are usually concluded for a limited number of years, yet they are frequently denominated treaties, while instances occur in which, though there is no time limit, the convention or another form has been used.

§ 565. The *Guía práctica del Diplomático Español*<sup>2</sup> classified treaties as treaties of peace, alliance, friendship, subsidy, guarantee, neutrality, cession of territory, limits, establishment, working of forests, river navigation, easements, repatriation, relief of destitute subjects, jurisdiction, extradition, execution of judgments, judicial assistance. But this classification does not correspond with present practice, for on most of these subjects conventions or other forms of compact have been concluded.

§ 566. A collection of treaty engagements concluded between various states from 1920 to 1926 shows that on the following subjects the arrangements made took these forms :

*Commerce* : 20 treaties, 15 conventions, 1 treaty with a convention, 19 agreements.

*Arbitration* : 11 treaties, 1 convention.

*Air Navigation* : 1 treaty, 3 conventions, 1 agreement.

*Extradition* : 5 treaties, 9 conventions.

<sup>1</sup> 250 n.

<sup>2</sup> de Castro y Casaleiz, i. 386.

§ 567. Generally speaking, it might be said that the more important the subject matter—perhaps also the more numerous the provisions required to deal with it—the more likely is it that it will be embodied in a treaty or convention, and that the relative importance decreases as we go down the list in § 561. But at the present day it cannot be said that any precise rules of nomenclature exist. A treaty between heads of states may relate to such a matter as extradition, or an agreement between heads of states regulate the export of hides and bones, while a declaration between governments may constitute an alliance in time of war, or a protocol establish the Permanent Court of International Justice. International compacts for the delimitation of boundaries are to be found as treaties, conventions and agreements. Treaties are sometimes concluded between governments, and conventions are often now so concluded, while treaties between heads of states are sometimes amended by means of agreements between governments.

§ 568. Within modern times a great number of multilateral conventions have been concluded on such matters as the protection of literary and industrial property ; collisions at sea and salvage ; commercial statistics ; agriculture ; sanitary régime ; motor traffic ; freedom of transit ; aerial navigation ; radiotelegraphy ; safety of life at sea ; international exhibitions ; load-line certificates, etc. ; to say nothing of conventions aimed at the definition of rules of international law, like those of the Hague Peace Conferences of 1899 and 1907. Many of these are between heads of states and many between governments. And conventions of a similar wide variety have been concluded, with the same diversity of form, under the auspices of the League of Nations, to which reference is made in Chapter XXX.

§ 569. While it is difficult, therefore, in present practice to discern any consistency in the use made of forms and titles for international compacts, in this and the following chapters they will be treated in accordance with the classification in § 561. In the past, treaties and conventions were more particularly associated with compacts between heads of states, whilst agreements and other forms served for compacts between governments, according to their respective titles, and it may be that a return to a more systematic procedure may yet be found on these lines.

§ 570. Originally the expression “treaty” was applied to the negotiation ; the practice has prevailed of applying it to

the final proceeding which closes the negotiation. Hence the complete term would be "*traité et appointement*" to denote a treaty.<sup>1</sup> The verb *traiter* means to negotiate.

Convention is an adaptation of the Latin word *conventio*, compact, covenant.

"Stipulate" and "stipulation" are properly used with reference to the clauses of a contract. As is well known, the etymology is from *stipula*, a straw, which was broken between the parties to a bargain, and the bringing together of the two ends of the fracture symbolised accordance in its terms. It is incorrect to employ these words to denote a demand for a particular condition; but anyone who wishes to justify their misuse can quote the passage from Rabelais given in Littré's *Dictionary of the French Language*, s.v. "stipuler."

§ 571. Treaties and conventions concluded between heads of states do not differ as regards their structure. Their principal parts are :

(1) The preamble, beginning with (a) the names and titles of the high contracting parties; (b) a summary of the objects contemplated, or, in other words, a statement of the purpose; (c) the names and official designations of the plenipotentiaries appointed by the high contracting parties; (d) a paragraph stating that the plenipotentiaries have produced their full powers, which were found to be in good and due form, and that they have agreed upon the following articles.

(2) The various stipulations or articles, usually beginning with the most general, next the particular ones, and finally the articles, if any, providing for the means of executing them.

(3) An article, or articles, where necessary, defining the application or non-application of the treaty to oversea territories; often this takes the form of provisions for accession and eventual termination.

(4) The duration of the treaty, if, as is usual, it is to be subject to termination on notice being given by one or other party. This often takes the form of a provision that the treaty shall remain in force for a specified number of years, and that unless a year's notice (or less) of termination is given in advance by one or other party it shall thereafter continue in force pending such notice.

(5) A provision for ratification, and for the place (normally that where the treaty is signed) and time of the exchange of ratifications (often "as soon as possible").

(6) Mention of the date when the treaty is to come into effect.

<sup>1</sup> de Maulde-la-Clavière, i. 193.

(7) A clause stating "In witness whereof" ("En foi de quoi") the respective plenipotentiaries have affixed their signatures and seals.

(8) Locality and date ("Done at . . . the . . . day of . . . , 19 . . .").

(9) Seals and signatures.

§ 572. If a treaty covers more than a single sheet of paper, the sheets are taped together, and the ends of the tape brought together and imbedded in the seals of the plenipotentiaries. If a plenipotentiary has no special seal it is customary for the seal to bear his initials.

§ 573. As regards paragraphs (1) and (3) above, the forms of treaties concluded by members of the British Commonwealth of Nations are dealt with more fully in Chapter XXVIII.

As regards (4) it is important to bear in mind that omission to provide means for the termination of a treaty may give rise to future difficulty. The Protocol of January 17, 1871, of the London Conference of that year ran :

"Les plénipotentiaires de l'Allemagne du Nord, de l'Autriche-Hongrie, de la Grande-Bretagne, de l'Italie, de la Russie, et de la Turquie, réunis aujourd'hui en conférence, reconnaissent que c'est un principe essentiel du droit des gens qu'aucune Puissance ne peut se délier des engagements d'un traité, ni en modifier les stipulations, qu'à la suite de l'assentiment des Parties contractantes, au moyen d'une entente amicale."

Writers on the subject, it is true, deal with certain eventualities in which a treaty may be deemed to have become void, and tribunals have in certain instances made pronouncements on such matters.<sup>1</sup> But it is best, wherever called for, to include a provision in the treaty as to its future termination, on notice being given to that effect.

Shortly before the war of 1914 an instance occurred in which a treaty between a foreign Power and Zanzibar having been terminated, that Power claimed that a former treaty on the same subject, which contained no provision for termination, thereupon revived. The outbreak of war, however, rendered further discussion of the matter unnecessary.

As regards (6), unless the treaty contains a provision prescribing the time or conditions of its entry into force (a usual provision is that it shall take effect on the exchange of ratifications), it is assumed that it becomes operative on the date of the exchange of ratifications, or, should there be no provision for ratification, then on the date of signature.

<sup>1</sup> See, e.g., *Annual Digest* (1925-6), 352-8; (1927-8), 420-3.

Under Article 18 of the Covenant of the League of Nations, however, every treaty or international engagement entered into by any member of the League shall be forthwith registered with the Secretariat of the League, and shall not be binding until so registered.

§ 574. International compacts between two countries are as a rule drawn up in two texts, viz., the languages of the respective countries, printed in parallel columns, and are prepared in duplicate, in order that each country may retain a signed original version of the treaty instrument. Each of the two countries is entitled to precedence in the original retained by it, *i.e.* its language appears in the first, or left-hand, column; its sovereign or president (or it may be government) and its plenipotentiary are named first in the preamble; and its plenipotentiary signs first, above the signature of the plenipotentiary of the other country; or if the signatures are affixed on the same line, then on the left-hand side, which is the place of honour. But in ordinary practice the inconvenience of reprinting the preamble of a treaty for this purpose is avoided by giving each country precedence in its own language, and then, without further amendment, inverting the order of the two texts, as required, so that the language of each country appears in the left-hand column of the original retained by it.

§ 575. Sometimes a treaty or convention between two countries is signed in one language only, and in this case changes in the preamble are necessary, so as to give the required precedence to each country in the original retained by it. This is ordinarily the case in treaties between Great Britain and the United States, and usually in treaties between Great Britain and Japan or Siam. The Agreement between China and the Soviet Union of May 31, 1924, for the settlement of pending questions, together with the declarations attached thereto, was signed in English alone, as was also the Convention of Friendship and Economic Co-operation between Japan and the Soviet Union of January 20, 1925.

§ 576. Other cases occur in which a treaty may be signed in languages which are not those of the contracting parties. The Treaty of Peace between Japan and Russia of August 23/September 5, 1905, was signed in English and French.

§ 577. Sometimes again there may be more than two texts. The Treaty of Extradition between Great Britain and Austria-Hungary of December 3, 1873, was signed in English, German and Hungarian. Treaties concluded by Finland contain both Finnish and Swedish texts. The Protocol of October 7, 1929,

between Finland and the Soviet Union regarding postal matters was signed in four texts, Finnish, Swedish, Russian and French.

§ 578. Where an international compact is signed in two or more languages, it may be presumed that much care is taken to effect the closest correspondence possible between the respective texts. But this may sometimes be difficult, more especially when the languages differ widely in character. In such cases it is desirable that it should be specified in the treaty which of the languages is to be regarded as authoritative, to provide for the possibility of a difference of opinion subsequently arising as to the precise meaning of a stipulation. This can, however, only be done by consent, which may be withheld. Sometimes indeed both texts are declared authentic, as in the Treaty of Versailles of June 28, 1919 (French and English texts). In the Treaty of Peace with Austria of September 10, 1919 (French, English and Italian texts) it was agreed that the French text should (with certain exceptions) prevail in cases of divergence. The Treaty of Peace between Japan and Russia of August 23/September 5, 1905 (English and French) contained a similar provision. In the case of the Treaty between Great Britain and Persia of May 10, 1928, respecting Persian Tariff Autonomy (English and Persian texts) a French text was afterwards prepared and agreed to as an authoritative version. A provision occasionally employed in a treaty is that, in the event of dispute, questions of interpretation and application shall be referred for settlement to the Permanent Court of International Justice (see also 852).

§ 579. When an international compact is concluded between more than two countries there may be one counterpart for each, and in this event the rules of the *alternat* would be followed and each country be given precedence in the original retained by it. But in modern times the ordinary practice, and that habitually followed when a treaty or convention is concluded between many heads of states, is to range their names and titles in the preamble in the alphabetical order of the countries over which they preside, and to have a single signed original, to which the signatures of their plenipotentiaries are appended in the same order, and which is then deposited in the treaty archives of the headquarters government, viz. that of the country in which the treaty is signed, each of the other countries being furnished by that government with a copy of the treaty, certified by it as correct. In the case of treaty arrangements signed at Geneva under the auspices of the

League of Nations, a similar procedure is followed, the original treaty being deposited with the Secretariat of the League.

§ 580. Multilateral treaties, conventions, etc., are often signed in a single French text, but there is an increasing tendency to use both French and English texts for such compacts, as is done in the case of those concluded under the auspices of the League of Nations. While such treaties, if between heads of states, follow in general the form described in § 571, the participation of many states therein often renders necessary the insertion of special provisions dealing with such matters as the successive deposits of ratifications, times and manner of entry into force for the respective countries, notices of termination, etc. Usually also provision is made for the accession of non-signatory states in the event of their desiring to become parties.

§ 581. Treaties and conventions were formerly usually expressed as concluded between sovereigns of monarchical states, or between presidents of republics, or between sovereigns and presidents. The practice may be more clearly stated by saying that they were usually concluded between sovereigns, seeing that a republic is itself sovereign. But, as mentioned in § 568, at the present day conventions, to which many countries are parties, are often concluded between governments. In these, the governments of the contracting countries are sometimes recited in alphabetical order in the preamble; or, on the other hand, the preamble may be a simple statement that the undersigned, on behalf of their respective governments, have agreed as follows. In either case signatures are appended in the strict alphabetical order of the countries taking part. An instance of such a convention—the International Exhibitions Convention—with its abbreviated preamble, and its many clauses relating to deposits of ratifications, scope, entry into force, accessions, notices of termination, etc., is shown in § 604. Declarations, agreements and protocols, on the other hand, are ordinarily concluded between governments. And when in such cases ratification is provided for, it would seem appropriate that the ratification should be that of the government in whose name the compact has been signed. The form of ratification used in Great Britain for such purposes is shown in § 727.

§ 582. In a treaty or convention between heads of states, these are styled the high contracting parties; if the compact is between governments, the latter are ordinarily referred to as the contracting parties.

§ 583. The following examples of treaties and conventions on the subjects of Alliance, Annexation, Arbitration,

Boundaries, Commerce, Mutual Guarantee, Naval Armament, Peace, Royal Marriage, illustrate the actual forms assumed by these compacts in cases of a more important nature.

§ 584. Examples are also given in § 605 of a form of compact styled *Concordat*, between the Pope and the head of a foreign state, which has for its purpose to safeguard the interests of the Roman Catholic Church in the state concerned. Post-war arrangements of this nature have been concluded by the Holy See with Bavaria, Italy, Latvia, Lithuania, Poland, Prussia and Roumania.

In Chapters XXIV to XXVII examples are given of Declarations, Agreements, Protocols, and other forms of compact.

§ 585. As shown in these various examples, international compacts signed by the plenipotentiaries of heads of states require the exhibition of full powers from the respective heads of states before signatures are appended to the compact. Compacts between governments may similarly require the exhibition of full powers on the part of those signing on their behalf. But in the case of compacts of a less important nature, such as are concluded by means of exchanges of notes, expressions such as "duly authorised thereto," "on behalf of the government of . . .," often occur; or an agreement of this nature may simply imply by its terms that it is concluded by the respective governments named, and is signed by their representatives on their behalf. In such cases full powers are not as a rule issued.

#### ALLIANCE

§ 586. *Treaty between Austria-Hungary and Germany. Vienna, October 7, 1879.*<sup>1</sup> (*German text.*)

(*Translation.*)

Inasmuch as Their Majesties the Emperor of Austria, King of Hungary, and the German Emperor, King of Prussia, consider it their imperative duty as monarchs to provide for the security of their Empires, and the peace of their subjects, under all circumstances;

Inasmuch as the two Sovereigns, as during the federal relationship formerly existing, will be enabled by the close association of the two Empires to fulfil this duty more easily and more efficaciously;

Inasmuch as, finally, intimate co-operation between Germany and Austria-Hungary can menace no one, but is rather calculated

<sup>1</sup> *Br. and For. State Papers*, cxxi. 1014.

to consolidate the peace of Europe as established by the Berlin stipulations ;

Their Majesties the Emperor of Austria, King of Hungary, and the German Emperor, while solemnly promising each other never to allow their purely defensive agreement to develop an aggressive tendency in any direction, have determined to conclude an alliance of peace and mutual defence.

For this purpose Their Most Exalted Majesties have designated as their plenipotentiaries : [*names*]

Who, having met this day at Vienna and exchanged their full powers, found in good and due form, have agreed upon the following articles :

Art. 1.—Should, contrary to the hope and the sincere desire of the two High Contracting Parties, one of the two Empires be attacked by Russia, the High Contracting Parties bind themselves to come to the assistance of each other with the whole military strength of their Empire, and accordingly only to conclude peace in common and by mutual agreement.

2. Should one of the High Contracting Parties be attacked by another Power, the other Party binds itself hereby not only to refrain from assisting the aggressor against its high ally, but to observe at least a benevolent neutral attitude towards its fellow contracting party.

Should, however, the attacking party in such a case be supported by Russia, either by active co-operation or by military measures which constitute a menace to the party attacked, the obligation of reciprocal assistance with the whole fighting force which is stipulated in Article 1 of this treaty becomes equally operative, and the conduct of the war by the two High Contracting Parties shall in this case also be joint until the conclusion of a common peace.

3. The duration of this treaty shall be provisionally fixed at five years from the date of ratification. One year before the expiration of this period the two High Contracting Parties shall consult together concerning the question whether the conditions serving as basis for the treaty still prevail, and shall reach an agreement in regard to the further continuance or possible modification of certain details. If, in the course of the first month of the last year of the treaty, no invitation has been received from either side to open these negotiations, the treaty shall be considered as renewed for a further period of three years.

4. This treaty shall, in conformity with its peaceful character, and to avoid any misinterpretation, be kept secret by both High Contracting Parties, and only communicated to a third Power upon a joint understanding between the two parties and according to the terms of a special agreement.

The two High Contracting Parties cherish the hope, after the sentiments expressed by the Emperor Alexander at the meeting at Alexandrowo, that the armaments of Russia will not in reality

prove to be menacing to them, and have on that account no reason for making a communication at present ; should, however, this hope, contrary to their expectations, prove to be erroneous, the two High Contracting Parties would consider it their loyal obligation to acquaint the Emperor Alexander, at least confidentially, that they must consider an attack on one of them as directed against both.

5. This treaty shall derive its validity from the approbation of the two exalted Sovereigns and shall be ratified within fourteen days after this approbation has been granted by Their Most Exalted Majesties.

In witness whereof the plenipotentiaries have signed this treaty with their own hands and affixed their seals.

Done at Vienna, October 7, 1879.

[Seals and signatures.]

§ 587. *Military Convention between France and Russia. St. Petersburg, August 17, 1892.*<sup>1</sup> (*French text.*)

La France et la Russie, étant animées d'un égal désir de conserver la paix, et n'ayant d'autre but que de parer aux nécessités d'une guerre défensive provoquée par une attaque des forces de la Triple Alliance contre l'une ou l'autre d'entre elles, sont convenues des dispositions suivantes :

1. Si la France est attaquée par l'Allemagne, ou par l'Italie soutenue par l'Allemagne, la Russie emploiera toutes ses forces disponibles pour attaquer l'Allemagne.

Si la Russie est attaquée par l'Allemagne, ou par l'Autriche soutenue par l'Allemagne, la France emploiera toutes ses forces disponibles pour combattre l'Allemagne.

2. Dans le cas où les forces de la Triple Alliance, ou d'une des Puissances qui en font partie, viendraient à se mobiliser, la France et la Russie, à la première annonce de l'événement, et sans qu'il soit besoin d'un concert préalable, mobiliseront immédiatement et simultanément la totalité de leurs forces et les porteront le plus près possible de leurs frontières.

3. Les forces disponibles qui doivent être employées contre l'Allemagne seront du côté de la France, de 1,300,000 hommes, du côté de la Russie, de 700,000 à 800,000 hommes.

Ces forces s'engageront à fond, en toute diligence, de manière que l'Allemagne ait à lutter, à la fois, à l'est et à l'ouest.

4. Les États-majors des armées des deux pays se concerteront en tout temps pour préparer et faciliter l'exécution des mesures prévues ci-dessus.

Ils se communiqueront, dès le temps de paix, tous les renseignements relatifs aux armées de la Triple Alliance qui sont ou parviendront à leur connaissance.

Les voies et moyens de correspondre en temps de guerre seront étudiés et prévus d'avance.

<sup>1</sup> *Br. and For. State Papers*, cxxi. 1079.

5. La France et la Russie ne concluront pas la paix séparément.

6. La présente Convention aura la même durée que la Triple Alliance.

7. Toutes les clauses énumérées ci-dessus seront tenues rigoureusement secrètes.

[Signatures.]

§ 588. *Treaty of Defensive Alliance between Italy and Albania. Tirana, November 22, 1927.*<sup>1</sup> (*Italian and Albanian texts.*)

(*Translation.*)

Italy and Albania, being desirous of solemnly re-affirming and strengthening the solidarity which happily exists between the two states, and of devoting all their efforts to the removal of any causes which might disturb the peace between them, and between them and other states,

Recognising the benefits of close co-operation between the two states,

And once more confirming the fact that the interests and the security of each are bound up with those of the other,

Have decided to conclude a defensive alliance by this Treaty, with the sole object of stabilising the natural relations which happily exist between the two states and thus ensuring a policy of peaceful development,

And have accordingly appointed as their plenipotentiaries :

His Majesty the King of Italy : [name]

His Excellency the President of the Albanian Republic : [name]

Who, having communicated their full powers, found in good and due form, have agreed as follows :

(Six Articles. Art. 2 provides for a defensive alliance of twenty years duration.)

Art. 7.—The present Treaty shall be ratified, and shall thereafter be registered with the League of Nations. The ratifications shall be exchanged at Rome.

Done at Tirana, this 22nd day of November, 1927.

[Signatures.]

#### ANNEXATION

§ 589. *Treaty between Japan and Corea. Seoul, August 22, 1910.*<sup>2</sup>

(*Translation.*)

His Majesty the Emperor of Japan and His Majesty the Emperor of Corea, having in view the special and close relations between their respective countries, desiring to promote the common weal of the two nations and to assure permanent peace in the Extreme East, and being convinced that these objects can be best obtained

<sup>1</sup> *League of Nations Treaty Series*, lxi. 349.

<sup>2</sup> *Br. and For. State Papers*, ciii. 992.

by the annexation of Corea to the Empire of Japan, have resolved to conclude a Treaty of such annexation, and have, for that purpose, appointed as their plenipotentiaries, that is to say : [names] ;

Who, upon mutual conference and deliberation, have agreed to the following articles :

(Articles 1 to 7.)

Art. 8.—This Treaty, having been approved by His Majesty the Emperor of Japan and His Majesty the Emperor of Corea, shall take effect from the date of its promulgation.

In faith whereof, etc.,

[Date and signatures.]

§ 590. *Treaty between the British Empire, France, Italy and Japan (the Principal Allied Powers), and Roumania, relative to Bessarabia. Paris, October 28, 1920.<sup>1</sup> (French text.)*

L'Empire Britannique, la France, l'Italie, le Japon, principales Puissances alliées, et la Roumanie,

Considérant que dans l'intérêt de la paix générale en Europe il importe d'assurer dès maintenant sur la Bessarabie une souveraineté répondant aux aspirations de la population, et y garantissant aux minorités de race, de religion ou de langue la protection qui leur est due ;

Considérant que, des points de vue géographique, ethnographique, historique et économique, la réunion de la Bessarabie à la Roumanie est pleinement justifiée ;

Considérant que la population de la Bessarabie a manifesté son désir de voir la Bessarabie réunie à la Roumanie ;

Considérant enfin que la Roumanie a, de sa propre volonté, le désir de donner de sûres garanties de liberté et de justice, sans distinction de races, de religions ou de langue, conformément au Traité signé à Paris le 9 décembre 1919, aux habitants de l'ancien Royaume de Roumanie aussi bien qu'à ceux des territoires nouvellement transférés :

Ont résolu de conclure le présent Traité et ont, à cet effet, désigné pour leurs plénipotentiaires, sous réserve de la faculté de pourvoir à leur remplacement pour la signature, savoir : [names etc.]

Art. 1.—Les Hautes Parties Contractantes déclarent reconnaître la souveraineté de la Roumanie sur le territoire de la Bessarabie compris entre la frontière actuelle de Roumanie, la Mer Noire, le cours du Dniester depuis son embouchure jusqu'au point où il est coupé par l'ancienne limite entre la Bukovine et la Bessarabie et cette ancienne limite.

(Arts. 2 to 8 set forth steps to be taken, and conditions to be observed, while Art. 9 states that the High Contracting Parties will invite Russia to accede to the Treaty, when there exists a Russian Government recognised by them.)

Le présent Traité sera ratifié par les Puissances signataires.

<sup>1</sup> *Br. and For. State Papers*, cxiii. 647. Ratified by the British Empire, France, Italy and Roumania.

Il n'entrera en vigueur qu'après le dépôt de ses ratifications et à partir de l'entrée en vigueur du Traité signé par les principales Puissances alliées et associées et la Roumanie le 9 décembre, 1919.

Le dépôt des ratifications sera effectué à Paris. . . .

Fait à Paris le 28 octobre, 1920. . . .

[*Seals and signatures.*]

#### ARBITRATION

§ 591. *Arbitration Convention between France and Germany. Locarno, October 16, 1925.*<sup>1</sup> (*French text.*)

LES soussignés dûment autorisés,

Chargés par leurs Gouvernements respectifs de fixer les modalités suivant lesquelles il sera, ainsi qu'il est prévu dans l'article 3 du traité conclu en date de ce jour entre l'Allemagne, la Belgique, la France, la Grande-Bretagne et l'Italie, procédé à la solution pacifique de toutes les questions qui ne pourraient être résolues à l'amiable entre l'Allemagne et la France,

Ont convenu des dispositions suivantes :

Art. 1<sup>er</sup>.—Toutes contestations entre l'Allemagne et la France, de quelque nature qu'elles soient, au sujet desquelles les parties se contesteraient réciproquement un droit, et qui n'auraient pu être réglées à l'amiable par les procédés diplomatiques ordinaires, seront soumises pour jugement soit à un tribunal arbitral soit à la Cour permanente de Justice internationale ainsi qu'il est prévu ci-après. Il est entendu que les contestations ci-dessus visées comprennent notamment celles que mentionne l'article 13 du Pacte de la Société des Nations.

Cette disposition ne s'applique pas aux contestations nées de faits qui sont antérieurs à la présente convention et qui appartiennent au passé.

Les contestations pour la solution desquelles une procédure spéciale est prévue par d'autres conventions en vigueur entre l'Allemagne et la France seront réglées conformément aux dispositions de ces conventions.

Art. 2.—Avant toute procédure arbitrale ou avant toute procédure devant la Cour permanente de Justice internationale, la contestation pourra être, d'un commun accord entre les parties, soumise à fin de conciliation à une commission internationale permanente, dite Commission permanente de Conciliation, constituée conformément à la présente convention.

(Arts. 3 to 16 : Composition of commission, procedure, etc.)

Art. 17.—Toutes questions sur lesquelles le Gouvernement allemand et le Gouvernement français seraient divisés sans pouvoir les résoudre à l'amiable par les procédés diplomatiques ordinaires, dont la solution ne pourrait être recherchée par un jugement ainsi qu'il est prévu par l'article 1<sup>er</sup> de la présente convention et pour lesquelles une procédure de règlement ne serait pas déjà prévue par d'autres conventions en vigueur entre les parties, seront

<sup>1</sup> *Parliamentary Paper, Misc., No. 11 (1925).*

soumises à la Commission permanente de Conciliation, qui sera chargée de proposer aux parties une solution acceptable et, dans tous les cas, de présenter un rapport.

La procédure prévue par les articles 6 à 15 de la présente convention sera appliquée.

Art. 18.—Si, dans le mois qui suivra la clôture des travaux de la Commission permanente de Conciliation, les deux parties ne se sont pas entendues, la question sera, à la requête de l'une ou de l'autre partie, portée devant le Conseil de la Société des Nations, qui statuera conformément à l'article 15 du Pacte de la Société.

Art. 19.—Dans tous les cas et notamment si la question au sujet de laquelle les parties sont divisées résulte d'actes déjà effectués ou sur le point de l'être, la Commission de Conciliation ou, si celle-ci ne s'en trouvait pas saisie, le Tribunal arbitral ou la Cour permanente de Justice internationale, statuant conformément à l'article 41 de son statut, indiqueront, dans le plus bref délai possible, quelles mesures provisoires doivent être prises. Il appartiendra au Conseil de la Société des Nations, s'il est saisi de la question, de pourvoir de même à des mesures provisoires appropriées. Les Gouvernements allemand et français s'engagent respectivement à s'y conformer, à s'abstenir de toute mesure susceptible d'avoir une répercussion préjudiciable à l'exécution de la décision ou aux arrangements proposés par la Commission de Conciliation, ou par le Conseil de la Société des Nations, et, en général, à ne procéder à aucun acte, de quelque nature qu'il soit, susceptible d'aggraver ou d'étendre le différend.

Art. 20.—La présente convention reste applicable entre l'Allemagne et la France encore que d'autres Puissances aient également un intérêt dans le différend.

Art. 21.—La présente convention sera ratifiée. Les ratifications en seront déposées à Genève à la Société des Nations en même temps que les ratifications du traité conclu en date de ce jour entre l'Allemagne, la Belgique, la France, la Grande-Bretagne et l'Italie.

Elle entrera et demeurera en vigueur dans les mêmes conditions que ledit traité.

La présente convention, faite en un seul exemplaire, sera déposée aux archives de la Société des Nations, dont le Secrétaire général sera prié de remettre à chacun des deux Gouvernements contractants des copies certifiées conformes.

Fait à Locarno, le 16 octobre 1925.

[Seals and signatures.]

§ 592. *Treaty of Conciliation and Arbitration between Belgium and Finland. Stockholm, March 4, 1927.*<sup>1</sup> (French text.)

Sa Majesté le Roi des Belges et Son Excellence M. le Président de la République de Finlande, animés du désir de développer les relations amicales qui unissent les deux pays, décidés à donner, dans leurs rapports réciproques, une large application aux principes

<sup>1</sup> *Moniteur Belge, December 31, 1927.*

dont s'inspire la Société des Nations, ont résolu de conclure un traité de conciliation et d'arbitrage, et ont nommé à cet effet pour leurs plénipotentiaires, savoir :

Sa Majesté le Roi des Belges : [name]

Son Excellence M. le Président de la République de Finlande : [name]

Lesquels, après avoir échangé leurs pleins pouvoirs reconnus en bonne et due forme, sont convenus des dispositions suivantes :

Art. 1.—Toutes contestations entre la Belgique et la Finlande, de quelque nature qu'elles soient, au sujet desquelles les Parties se contesteraient réciproquement un droit, et qui n'auraient pu être réglées à l'amiable par les procédés diplomatiques ordinaires, seront soumises pour jugement à la Cour permanente de Justice internationale, ainsi qu'il est prévu ci-après.

Cet engagement ne s'applique qu'aux contestations qui s'élèveraient après la ratification du présent traité au sujet de situations ou de faits postérieurs à cette ratification.

Les contestations pour la solution desquelles une procédure spéciale est prévue par d'autres conventions en vigueur entre la Belgique et la Finlande seront réglées conformément aux dispositions de ces conventions.

Art. 2.—Avant toute procédure devant la Cour permanente de Justice internationale, la contestation pourra être, d'un commun accord entre les Parties, soumise à fin de conciliation à une commission internationale permanente, dite Commission permanente de conciliation, constituée conformément au présent traité.

Art. 3.—La Commission permanente de conciliation prévue à l'article 2 sera composée de cinq membres, qui seront désignés comme il suit, savoir : Le Gouvernement belge et le Gouvernement finlandais nommeront chacun un membre de la commission, choisi parmi leurs nationaux respectifs, et désigneront, d'un commun accord, les trois autres membres de la commission parmi les ressortissants de tierces Puissances ; ces trois membres de la commission devront être de nationalités différentes, et, parmi eux, les Gouvernements belge et finlandais désigneront le président de la commission.

Les membres de la commission sont nommés pour trois ans ; leur mandat est renouvelable. Ils resteront en fonctions jusqu'à leur remplacement et, dans tous les cas, jusqu'à l'achèvement de leurs travaux en cours au moment de l'expiration de leur mandat.

Il sera pourvu, dans le plus bref délai, aux vacances qui viendraient à se produire, par suite de décès, de démission ou de quelque autre empêchement, en suivant le mode fixé pour les nominations.

(Then follow Arts. 4 to 14 relating to procedure.)

Art. 15.—A défaut de conciliation devant la Commission permanente de conciliation, la contestation sera soumise, par voie de compromis, à la Cour permanente de Justice internationale, dans les conditions et suivant la procédure prévue par son statut.

A défaut d'accord entre les Parties sur le compromis et après

un préavis d'un mois, l'une ou l'autre d'entre elles aura la faculté de porter directement, par voie de requête, la contestation devant la Cour permanente de Justice internationale.

Art. 16.—Toutes questions autres que celles visées à l'article premier, sur lesquelles le Gouvernement belge et le Gouvernement finlandais seraient divisés sans pouvoir les résoudre à l'amiable par les procédés diplomatiques ordinaires, et pour lesquelles une procédure de règlement ne serait pas déjà prévue par un traité en vigueur entre les Parties, seront soumises à la Commission permanente de conciliation, qui sera chargée de proposer aux Parties une solution acceptable et, dans tous les cas, de présenter un rapport.

La procédure prévue par les articles 5 à 14 du présent traité sera appliquée.

Art. 17.—Si, dans le mois qui suivra la clôture des travaux de la Commission permanente de conciliation, les deux Parties ne se sont pas entendues, la question sera, à la requête de l'une ou l'autre Partie, soumise pour décision à un tribunal d'arbitrage, constitué, à moins d'accord spécial entre les Parties, conformément aux dispositions de l'article 45 de la Convention de La Haye du 18 octobre 1907 pour le règlement pacifique des conflits internationaux. Ce tribunal suivra, dans la mesure où elle s'y prête, la procédure prévue au titre IV, chapitre III, de ladite convention. Toutefois, si, dans un délai de six mois à dater du jour où l'une des Parties aura adressé à l'autre une demande tendant à soumettre le différend à l'arbitrage, le compromis visé par ladite Convention de La Haye n'a pas été signé, il sera établi, à la demande de l'une des Parties, par le Tribunal arbitral.

Le tribunal statuera *ex æquo et bono*.

La sentence arbitrale spécifiera, s'il y a lieu, les modalités d'exécution, notamment en fixant des délais d'exécution.

(Arts. 18 to 21 : General provisions.)

Art. 22.—Le présent traité sera ratifié par S.M. le Roi des Belges, après approbation des Chambres, et par S.E.M. le Président de la République de Finlande. L'échange des ratifications aura lieu à Stockholm aussitôt que faire se pourra.

Le traité est conclu pour une durée de dix ans, à compter de la date de l'échange des ratifications. S'il n'est pas dénoncé six mois au moins avant l'expiration de ce terme, il demeurera en vigueur pour une nouvelle période de cinq ans, et ainsi de suite.

En foi de quoi les plénipotentiaires ont signé le présent traité.

Fait à Stockholm, le 4 mars 1927.

[Signatures.]

#### BOUNDARIES

§ 593. *Treaty between His Britannic Majesty and the United States respecting Boundaries in Passamaquoddy Bay, etc. Washington, May 21, 1910.*<sup>1</sup> (English text.)

<sup>1</sup> Br. and For. State Papers, ciii. 319.

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and the United States of America, being equally desirous of fixing and defining the location of the international boundary line between the United States and the Dominion of Canada in Passamaquoddy Bay and to the middle of Great Manan Channel, and of removing all causes of dispute in connection therewith, have for that purpose resolved to conclude a Treaty, and to that end have appointed as their plenipotentiaries :

His Britannic Majesty : [name]

The President of the United States of America : [name]

Who, after having communicated to each other their respective full powers, which were found to be in due and proper form, have agreed to and concluded the following articles :

(Arts. 1 to 3.)

This Treaty shall be ratified by His Britannic Majesty and by the President of the United States, by and with the advice and consent of the Senate thereof; and the ratifications shall be exchanged in Washington as soon as practicable.

In faith whereof the respective plenipotentiaries have signed this treaty in duplicate and have hereunto affixed their seals.

Done at Washington the 21st day of May, 1910.

[Seals and signatures.]

§ 594. *Convention between Great Britain and the Netherlands respecting Boundaries in Borneo. The Hague, March 26, 1928.<sup>1</sup> (English and Dutch texts.)*

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, and Her Majesty the Queen of the Netherlands,

Being desirous of further delimiting part of the frontier established in Article 3 of the Convention signed at London on the 20th June, 1891, for the delimitation of the boundary line between the States in the Island of Borneo which are under British protection and the Netherlands territory in that island,

Have resolved to conclude a Convention for that purpose, and have appointed as their plenipotentiaries ;

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India,  
for Great Britain and Northern Ireland : [name]

Her Majesty the Queen of the Netherlands : [names]

Who, having communicated their full powers, found in good and due form, have agreed as follows :

(Then follow the two Articles of the Convention setting forth the boundary, as shown also on the signed map attached.)

The present Convention shall be ratified and shall come into

<sup>1</sup> *Treaty Series*, No. 32 (1930).

force three months after the exchange of the acts of ratification, which shall take place at The Hague as soon as possible.

In witness whereof the respective plenipotentiaries have signed the present Convention and have affixed thereto their seals.

Done in duplicate at The Hague, the 26th day of March, 1928.

[Seals and signatures.]

#### COMMERCE

§ 595. *Treaty of Commerce and Navigation between Great Britain and Turkey. Angora, March 1, 1930.*<sup>1</sup> (*English and Turkish texts.*)

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, and His Excellency the President of the Republic of Turkey,

Desiring to facilitate the development of the trade and commerce of their respective countries, and to regulate by means of a treaty the commercial relations between the United Kingdom of Great Britain and Northern Ireland and such other territories under the sovereignty, protection and authority of His Britannic Majesty as he may desire should be bound by the treaty on the one side, and Turkey on the other side,

Have resolved to conclude a treaty for this purpose, and have appointed as their plenipotentiaries ;

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India ;

for the United Kingdom of Great Britain and Northern Ireland : [*name*]

His Excellency the President of the Republic of Turkey : [*names*]

Who, having communicated their full powers, found in good and due form, have agreed as follows :

Art. 1.—The territories to which the present treaty applies are, on the part of His Britannic Majesty, the United Kingdom of Great Britain and Northern Ireland and the territories in respect of which notification of accession is given under Art. 38 or notice of application is given under Art. 37.

(Arts. 2–36.)

Art. 37.—His Britannic Majesty may, through His Britannic Majesty's Representative in Turkey, give notice of his desire that the stipulations of the present Treaty shall apply to any British colony or protectorate or to any mandated territory administered by his Government in the United Kingdom of Great Britain and Northern Ireland, and from the date of such notice the Treaty shall be in force as between Turkey and the territory specified in such notice.

As regards any such territory in respect of which the stipulations of the present Treaty shall have been made applicable under this

<sup>1</sup> *Treaty Series*, No. 40 (1930).

Article, either of the High Contracting Parties shall have the right to terminate the application of the said stipulations on giving twelve months' notice to that effect.

Art. 38.—His Britannic Majesty may, by a notification made by His Britannic Majesty's Representative in Turkey, accede to the present Treaty in respect of any of His Majesty's self-governing Dominions or India.

After the expiry of a period of four years from the coming into force of the present Treaty, either of the High Contracting Parties may, by giving twelve months' notice, terminate the application of the Treaty to any territory in respect of which His Majesty has notified his accession under paragraph 1 of this Article.

Any notification made under paragraph 1 of this article may include any dependency or mandated territory administered by the Government of the territory in respect of which His Majesty has notified his accession ; and any notice of denunciation given under paragraph 2 shall be applicable to any such dependency or mandated territory which was included in such notification of accession.

Art. 39.—The present Treaty shall be ratified, and the ratifications shall be exchanged at Angora as soon as possible. It shall come into force immediately on the exchange of ratifications, and shall be binding during a period of five years from the date of its coming into force.

In case neither of the High Contracting Parties shall have given notice to the other twelve months before the expiration of the said period of five years of its intention to terminate the Treaty, it shall remain in force until the expiration of one year from the date of such notice.

In the absence of an express provision to that effect, such notice shall not affect the operation of the Treaty as between Turkey and any territory in respect of which notification of accession has been given under Art. 38.

In witness whereof the respective plenipotentiaries have signed the present Treaty and have affixed thereto their seals.

Done at Angora, in English and in Turkish, both texts having equal force, the 1st day of March 1930.

[Seals and signatures.]

#### MUTUAL GUARANTEE

§ 596. *Treaty of Mutual Guarantee between Germany, Belgium, France, Great Britain and Italy. Locarno, October 16, 1925.*<sup>1</sup> (French text.)

LE Président de l'Empire allemand, Sa Majesté le Roi des Belges, le Président de la République française, Sa Majesté le Roi du Royaume-Uni de Grande-Bretagne et d'Irlande et des Territoires britanniques au delà des Mers, Empereur des Indes, Sa Majesté le Roi d'Italie ;

<sup>1</sup> *Br. and For. State Papers*, cxxi. 923.

Soucieux de satisfaire au désir de sécurité et de protection qui anime les nations qui ont eu à subir le fléau de la guerre de 1914-18 ;

Constatant l'abrogation des traités de neutralisation de la Belgique, et conscients de la nécessité d'assurer la paix dans la zone qui a été si fréquemment le théâtre des conflits européens ;

Et également animés du sincère désir de donner à toutes les Puissances signataires intéressées des garanties complémentaires dans le cadre du Pacte de la Société des Nations et des traités en vigueur entre elles ;

Ont résolu de conclure un traité à ces fins et ont désigné pour leurs plénipotentiaires, savoir : [names]

Lesquels, après avoir échangé leurs pleins pouvoirs, reconnus en bonne et due forme, ont convenu les dispositions suivantes :

Art. 1<sup>er</sup>.—Les hautes parties contractantes garantissent individuellement et collectivement, ainsi qu'il est stipulé dans les articles ci-après, le maintien du *statu quo* territorial résultant des frontières entre l'Allemagne et la Belgique et entre l'Allemagne et la France, et l'inviolabilité desdites frontières telles qu'elles sont fixées par ou en exécution du Traité de Paix signé à Versailles le 28 juin 1919, ainsi que l'observation des dispositions des articles 42 et 43 dudit traité, concernant la zone démilitarisée.

(Arts. 2 to 6.)

Art. 7.—Le présent traité, destiné à assurer le maintien de la paix et conforme au Pacte de la Société des Nations, ne pourra être interprété comme restreignant la mission de celle-ci de prendre les mesures propres à sauvegarder efficacement la paix du monde.

Art. 8.—Le présent traité sera enregistré à la Société des Nations conformément au Pacte de la Société. Il restera en vigueur jusqu'à ce que, sur la demande de l'une ou de l'autre des hautes parties contractantes notifiée aux autres Puissances signataires trois mois d'avance, le Conseil, votant à la majorité des deux tiers au moins, constate que la Société des Nations assure aux hautes parties contractantes des garanties suffisantes, et le traité cessera alors ses effets à l'expiration d'un délai d'une année.

Art. 9.—Le présent traité n'imposera aucune obligation à aucun des Dominions britanniques ou à l'Inde, à moins que le Gouvernement de ce Dominion ou de l'Inde ne signifie qu'il accepte ces obligations.

Art. 10.—Le présent traité sera ratifié et les ratifications seront déposées à Genève dans les archives de la Société des Nations aussitôt que faire se pourra.

Il entrera en vigueur dès que toutes les ratifications auront été déposées et que l'Allemagne sera devenue membre de la Société des Nations.

Le présent traité, fait en un seul exemplaire, sera déposé aux archives de la Société des Nations, dont le Secrétaire général sera prié de remettre à chacune des hautes parties contractantes des copies certifiées conformes.

En foi de quoi les plénipotentiaires susnommés ont signé le présent traité.

Fait a Locarno, le 16 octobre 1925.

[*Seals and signatures.*]

### NAVAL ARMAMENT

§ 597. *Treaty between the United States, France, the British Empire, Italy and Japan, for the Limitation and Reduction of Naval Armament. London, April 22, 1930.*<sup>1</sup> (*English and French texts.*)

The President of the United States of America, the President of the French Republic, His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, His Majesty the King of Italy, and His Majesty the Emperor of Japan,

Desiring to prevent the dangers and reduce the burdens inherent in competitive armament, and

Desiring to carry forward the work begun by the Washington Naval Conference, and to facilitate the progressive realisation of general limitation and reduction of armaments,

Have resolved to conclude a Treaty for the limitation and reduction of naval armament, and have accordingly appointed as their plenipotentiaries :

The President of the United States of America : [*names*]

The President of the French Republic : [*names*]

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India

for Great Britain and Northern Ireland and all parts of the British Empire which are not separate Members of the League of Nations : [*names*]

for the Dominion of Canada : [*names*]

for the Commonwealth of Australia : [*name*]

for the Dominion of New Zealand : [*name*]

for the Union of South Africa : [*name*]

for the Irish Free State : [*name*]

for India : [*name*]

His Majesty the King of Italy : [*names*]

His Majesty the Emperor of Japan : [*names*]

Who having communicated to one another their full powers, found in good and due form, have agreed as follows :

(Then follow in twenty-six articles the provisions of the Treaty, which in Art. 23 provides that, with certain specified exceptions, it shall remain in force till December 31, 1936 ; in Art. 24 that it shall be ratified by the High Contracting Parties " in accordance with their respective constitutional methods, and the ratifications shall be deposited at London as soon as possible " ; in Art. 25 that, after all ratifications have been deposited, Part IV (regarding rules of international law concerning submarines) shall be communicated

<sup>1</sup> *Treaty Series*, No. 1 (1931).

by Great Britain to all non-signatory states, inviting them to accede to that Part definitely and without limit of time).

Art. 26.—The present Treaty, of which the English and French texts are both authentic, shall remain deposited in the archives of His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland. Duly certified copies thereof shall be transmitted to the Governments of all the High Contracting Parties.

In faith whereof, etc.

Done at London, the 22nd day of April, 1930.

[*Seals and signatures.*]

#### PEACE

§ 598. It was formerly usual to preface a treaty of peace by a first article undertaking that it should be perpetual. Thus Article I of the Treaty of Versailles of September 3, 1783<sup>1</sup> (headed :

Au nom de la Très-Sainte et Indivisible Trinité, Père, Fils, et Saint Esprit. Ainsi soit-il),

ran thus :

Il y aura une paix Chrétienne, universelle et perpétuelle, tant par mer que par terre, et une amitié sincère et constante sera rétablie, entre Leurs Majestés Britannique et très Chrétienne, et entre leurs héritiers et successeurs, royaumes, états, provinces, pays, sujets, et vassaux, de quelque qualité et condition qu'ils soient, sans exception de lieux ni de personnes ; en sorte que les hautes parties contractantes apporteront la plus grande attention à maintenir entre elles, et leurs dits états et sujets, cette amitié et correspondance réciproque, sans permettre dorénavant que, de part ni d'autre, on commette aucunes sortes d'hostilités, par mer ou par terre, pour quelque cause ou sous quelque prétexte que ce puisse être : Et on évitera soigneusement tout ce qui pourroit altérer, à l'avenir, l'union heureusement rétablie, s'attachant au contraire à se procurer réciproquement, en toute occasion, tout ce qui pourroit contribuer à leur gloire, intérêts, et avantages mutuels, sans donner aucun secours ou protection, directement ou indirectement, à ceux qui voudroient porter quelque préjudice à l'une ou à l'autre des dites hautes parties contractantes. Il y aura un oubli et amnistie générale de tout ce qui a pu être fait ou commis, avant ou depuis le commencement de la guerre qui vient de finir.<sup>2</sup>

Notwithstanding, in 1793 the recently established French Republic declared war against Great Britain, a war which was carried on, with the slight intermission which followed on the Peace of Amiens, between France and Great Britain, the latter often with, sometimes without, allies, until 1815.

<sup>1</sup> Text in F. de Martens' *Recueil*, etc., xiii. 160.

<sup>2</sup> Jenkinson, iii. 335.

§ 599. *Treaty between Great Britain, Austria-Hungary, France, Germany, Italy, Russia and Turkey, for the Settlement of Affairs in the East. Berlin, July 13, 1878.*<sup>1</sup> (*French text.*)

Au nom de Dieu Tout-Puissant. S. M. la Reine du Royaume-Uni de la Grande Bretagne et d'Irlande, Impératrice des Indes ; le Président de la République Française ; S. M. l'Empereur d'Allemagne, Roi de Prusse ; S. M. l'Empereur d'Autriche, Roi de Bohême, &c., et Roi Apostolique de Hongrie ; S. M. le Roi d'Italie ; S. M. l'Empereur de Toutes les Russies, et S. M. l'Empereur des Ottomans, désirant régler dans une pensée d'ordre Européen, conformément aux stipulations du Traité de Paris du 30 mars 1856, les questions soulevées en Orient par les événements des dernières années et par la guerre dont le Traité Préliminaire de San Stefano a marqué le terme, ont été unanimement d'avis que la réunion d'un Congrès offrirait le meilleur moyen de faciliter leur entente.

Leurs dites Majestés et le Président de la République Française ont en conséquence nommé pour leurs Plénipotentiaires, savoir :  
[*names*]

Lesquels, suivant la proposition de la Cour d'Autriche-Hongrie et sur l'invitation de la Cour d'Allemagne, se sont réunis à Berlin munis de pleins pouvoirs qui ont été trouvés en bonne et due forme.

L'accord s'étant heureusement établi entre eux, ils sont convenus des stipulations suivantes :

[*Articles.*]

Le présent traité sera ratifié, et les ratifications en seront échangées à Berlin dans un délai de trois semaines, ou plus tôt si faire se peut.

En foi de quoi, etc.

[*Place, date.*]

[*Signatures.*]

§ 600. *Treaty between the United States and Spain for the Conclusion of Peace. Paris, December 10, 1898.*<sup>2</sup> (*English and Spanish texts.*)

The United States of America and Her Majesty the Queen Regent of Spain, in the name of Her august son, Don Alfonso XIII, desiring to end the state of war now existing between the two countries, have for that purpose appointed as plenipotentiaries :

The President of the United States : [*names*]

And Her Majesty the Queen Regent of Spain : [*names*]

Who, having assembled in Paris, and having exchanged their full powers, which were found to be in due and proper form, have, after discussion of the matters before them, agreed upon the following articles :

(Arts. 1 to 16.)

<sup>1</sup> *Br. and For. State Papers*, lxi. 749.

<sup>2</sup> *Ibid.*, xc. 382.

(Art. 17 provided for the exchange of ratifications at Washington "within six months from the date hereof, or earlier if possible.")

In faith whereof, etc.

Done in duplicate at Paris, the 10th day of December, in the year of our Lord 1898.

[*Seals and Signatures.*]

§ 601. *Treaty of Peace between Japan and Russia. Portsmouth (U.S.A.), August 23/September 5, 1905.*<sup>1</sup> (*English and French texts.*)

Sa Majesté l'Empereur du Japon, d'une part, et Sa Majesté l'Empereur de Toutes les Russies, d'autre part, étant animés du désir de rétablir les bienfaits de la paix pour leurs pays et pour leurs peuples, ont décidé de conclure un Traité de Paix, et ont nommé à cet effet leurs plénipotentiaires, savoir :

Sa Majesté l'Empereur du Japon : [*names*]

Sa Majesté l'Empereur de Toutes les Russies : [*names*]

Lesquels, après avoir échangé leurs pleins pouvoirs, trouvés en bonne et due forme, ont conclu les Articles suivants :

Art. 1.—Il y aura à l'avenir paix et amitié entre Leurs Majestés l'Empereur du Japon et l'Empereur de Toutes les Russies, ainsi qu'entre leurs États et sujets respectifs.

(Then follow the other Articles of the Treaty, Art. 14 providing for ratification within at most fifty days after the date of signature of the Treaty, the formal exchange to take place at Washington as soon as possible.)

Art. 15.—Le présent Traité sera signé en double, en langues anglaise et française. Les deux textes sont absolument conformes ; mais, en cas de divergence d'interprétation, le texte français fera foi.

En foi de quoi les plénipotentiaires respectifs ont signé et scellé de leurs sceaux le présent Traité de Paix.

Fait à Portsmouth (New Hampshire) le 5<sup>e</sup> jour du 9<sup>e</sup> mois de la 38<sup>e</sup> année de Meiji, correspondant au 23 août/5 septembre de l'an 1905.

[*Signatures and seals.*]

§ 602. *Treaty of Peace between the Allied and Associated Powers and Germany. Versailles, June 28, 1919.*<sup>2</sup> (*English and French texts.*)

The United States of America, the British Empire, France, Italy and Japan,

These Powers being described in the present Treaty as the Principal Allied and Associated Powers,

Belgium, Bolivia, Brazil, China, Cuba, Ecuador, Greece, Guatemala, Haiti, the Hedjaz, Honduras, Liberia, Nicaragua,

<sup>1</sup> *Br. and For. State Papers*, xcvi. 735.

<sup>2</sup> *Ibid.*, cxii. 7.

Panama, Peru, Poland, Portugal, Roumania, the Serb-Croat-Slovene State, Siam, Czechoslovakia and Uruguay,

These Powers constituting with the Principal Powers mentioned above the Allied and Associated Powers, of the one part ;

And Germany, of the other part ;

Bearing in mind that on the request of the Imperial German Government an armistice was granted on November 11, 1918, to Germany by the Principal Allied and Associated Powers in order that a Treaty of Peace might be concluded with her, and

The Allied and Associated Powers being equally desirous that the war in which they were successively involved directly or indirectly and which originated in the declaration of war by Austria-Hungary on July 28, 1914, against Serbia, the declaration of war by Germany against Russia on August 1, 1914, and against France on August 3, 1914, and in the invasion of Belgium, should be replaced by a firm, just and durable peace,

For this purpose the High Contracting Parties represented as follows :

(Here follow the names of the plenipotentiaries, of which the chief are given below.)

The President of the United States of America, by the Hon. Woodrow Wilson, President of the United States, acting in his own name and by his own proper authority : . . .

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, by the Rt. Hon. David Lloyd George, M.P., First Lord of His Treasury and Prime Minister. . . .

for the Dominion of Canada, by the Hon. Charles Joseph Doherty, Minister of Justice. . . .

for the Commonwealth of Australia, by the Rt. Hon. William Morris Hughes, Attorney-General and Prime Minister. . . .

for the Union of South Africa, by General the Rt. Hon. Louis Botha, Minister of Native Affairs and Prime Minister. . . .

for the Dominion of New Zealand, by the Rt. Hon. William Ferguson Massey, Minister of Labour and Prime Minister. . . .

for India, by the Rt. Hon. Edwin Samuel Montagu, M.P., His Secretary of State for India ; Major-General H.H. Maharaja Sir Ganga Singh Bahadur, Maharaja of Bikaner, G.C.S.I., etc.

The President of the French Republic, by M. Georges Clemenceau, President of the Council, Minister of War. . . .

His Majesty the King of Italy, by Baron S. Sonnino, Deputy. . . .

His Majesty the Emperor of Japan, by Marquis Saionji, formerly President of the Council of Ministers. . . .

His Majesty the King of the Belgians, by M. Paul Hymans, Minister for Foreign Affairs, Minister of State. . . .

(Continuing for the other Allied and Associated Powers in the order named.)

Germany, by Mr. Hermann Müller, Minister for Foreign Affairs of the Empire. . . .

Acting in the name of the German Empire and of each and every component state.

Who, having communicated their full powers, found in good and due form, have agreed as follows :

From the coming into force of the present Treaty the state of war will terminate. From that moment and subject to the provisions of this Treaty official relations with Germany, and with any of the German states, will be resumed by the Allied and Associated Powers.

(Then follows, as Part I of the Treaty, the Covenant of the League of Nations. The remainder of the Treaty, which consists in all of 440 articles, is divided into the following parts : (2) Boundaries of Germany ; (3) Political Clauses for Europe ; (4) German rights and interests outside Germany ; (5) Military, Naval, and Air clauses ; (6) Prisoners of War and Graves ; (7) Penalties ; (8) Reparation ; (9) Financial Clauses ; (10) Economic Clauses ; (11) Aerial Navigation ; (12) Ports, Waterways and Railways ; (13) Labour ; (14) Guarantees ; (15) Miscellaneous provisions.)

The present Treaty, of which the French and English texts are both authentic, shall be ratified.

The deposit of ratifications shall be made at Paris as soon as possible.

Powers of which the seat of government is outside Europe will be entitled merely to inform the Government of the French Republic through their diplomatic representative at Paris that their ratification has been given ; in that case they must transmit the instrument of ratification as soon as possible.

A first procès-verbal of the deposit of ratifications will be drawn up as soon as the Treaty has been ratified by Germany on the one hand, and by three of the Principal Allied and Associated Powers on the other hand.

From the date of this first procès-verbal the Treaty will come into force between the High Contracting Parties who have ratified it. For the determination of all periods of time provided for in the present Treaty this date will be the date of the coming into force of the Treaty.

In all other respects the Treaty will enter into force for each Power at the date of the deposit of its ratification.

The French Government will transmit to all the signatory Powers a certified copy of the procès-verbaux of the deposit of ratifications.

In faith whereof the above-named plenipotentiaries have signed the present Treaty.

Done at Versailles, the 28th day of June, 1919, in a single copy, which will remain deposited in the archives of the French Republic, and of which authenticated copies will be transmitted to each of the signatory Powers.

(The Treaties of Peace with Austria,<sup>1</sup> signed at St. Germain-en-

<sup>1</sup> *Br. and For. State Papers*, cxii. 317.

Laye, September 10, 1919; with Bulgaria,<sup>1</sup> signed at Neuilly, November 27, 1919; and with Hungary,<sup>2</sup> signed at Trianon, June 4, 1920, were drawn on similar lines, being prefaced in each case by the Covenant of the League of Nations, and were signed by the United States, the British Empire, France, Italy, Japan, Belgium, and other Allied and Associated Powers. The ratifications of the Treaties with Germany, Austria, Bulgaria, and Hungary, were duly deposited with the French Government from January 10, 1920, onwards, by the countries on whose behalf they were signed, with the exception of the United States, Ecuador and the Hedjaz, which did not ratify. A Treaty of Peace with Turkey<sup>3</sup> was not finally reached till July 24, 1923, when it was signed at Lausanne. Unlike the others, it was not prefaced by the Covenant of the League of Nations.)

### ROYAL MARRIAGE

§ 603. *Treaty for the Marriage of H.M. the King of Spain with H.R.H. Princess Victoria Eugénie Julia Ena. London, May 7, 1906.*<sup>4</sup> (*English and Spanish texts.*)

Be it known to all men by these Presents that whereas His Catholic Majesty Alfonso XIII, King of Spain, has judged it proper to announce his intention of contracting a marriage with H.R.H. Princess Victoria Eugénie Julia Ena, niece of H.M. Edward VII, King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and daughter of H.R.H. the Princess Beatrice Mary Victoria Feodore (Princess Henry of Battenberg), in order therefore to treat upon, conclude and confirm the Articles of the Treaty of the said marriage, His Britannic Majesty on the one part, and His Catholic Majesty on the other part, have named as their plenipotentiaries, that is to say;

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India : [*name*]

And His Majesty the King of Spain : [*name*]

Who, after having communicated to each other their full powers, found in good and due form, have agreed upon and concluded the following Articles :

Art. 1.—(For the solemnisation of the marriage at Madrid.)

Art. 2.—(Annual grant to the bride, and annual grant in case of widowhood. The private settlements to be made on either side to be agreed upon and expressed in a separate contract, which shall be deemed to form an integral part of the present treaty.)

Art. 3.—(Forfeiture by the bride of all hereditary rights of succession to the Crown and Government of Great Britain and

<sup>1</sup> *Br. and For. State Papers*, cxii. 781.

<sup>2</sup> *Ibid.*, cxiii. 486.

<sup>3</sup> *Ibid.*, cxvii. 543.

<sup>4</sup> *Treaty Series*, No. 6 (1906).

Ireland and the Dominions thereunto belonging or any part of the same).

The present Treaty shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done in duplicate at London, the 7th day of May, in the year of Our Lord 1906.

[Seals and signatures.]

#### GOVERNMENTAL CONVENTION

§ 604. *International Convention relative to International Exhibitions. Paris, November 22, 1928.*<sup>1</sup> (*French text.*)

(*Translation.*)

THE undersigned, plenipotentiaries of the Governments hereinafter enumerated, having met in conference at Paris from November 12 to 22, 1928, have, by common consent and subject to ratification, agreed as follows :

(Then follow thirty-two Articles under the heads of Definitions, Frequency of Exhibitions, International Exhibitions Bureau, Obligations of an Inviting Country and of Participating Countries, Awards.)

Art. 33.—The present convention shall be subject to ratification :

- (a) Each Government, as soon as it is ready to take part in a deposit of ratifications, shall so notify the French Government. As soon as seven Governments shall have so declared themselves ready, the deposit of ratifications shall take place, on a day appointed by the French Government, within a month of the date of the receipt by that Government of the last notification.
- (b) The ratifications shall be deposited in the archives of the French Government.
- (c) The deposit of ratifications shall be verified by a *procès-verbal* signed by the representatives of the Governments taking part therein and by the Minister for Foreign Affairs of the French Republic.
- (d) The Governments of signatory countries which have not been ready to deposit their ratifications under the conditions set forth in paragraph (a) of the present article, may do so subsequently by means of a written notification addressed to the Government of the French Republic and accompanied by the instruments of ratification.
- (e) Certified copies of the *procès-verbal* of the first deposit of ratifications, and of the notifications referred to in the preceding paragraph, shall be immediately transmitted,

<sup>1</sup> *Treaty Series, No. 9 (1931).*

through the intermediary of the French Government, by the diplomatic channel to the Governments which have signed the present convention or have acceded thereto. In the case of notifications received under the preceding paragraph, the French Government shall also state the dates on which they have been received.

Art. 34.—(a) The present convention applies *ipso facto* to the metropolitan territories only of the contracting countries.

(b) If a country desires the convention to apply to its colonies, protectorates, overseas territories, and territories under suzerainty or mandate, a statement to that effect shall be included in its ratification, or form the subject of a notification addressed in writing to the French Government. Any such notification shall be deposited in the archives of that Government.

If the latter procedure is adopted, the French Government shall transmit to the Governments of signatory or acceding countries a certified copy of such notification, showing the date at which it was received.

(c) Exhibitions which include only the products of a metropolitan country and of its colonies, protectorates, overseas territories and territories under suzerainty or mandate shall be considered as national exhibitions, and, in consequence, not subject to the present convention, whether or not the convention may be in force in such territories.

Art. 35.—(a) At any time after the coming into force of the present convention any non-signatory country may accede thereto.

(b) Such accession may be effected by a notification in writing transmitted through the diplomatic channel to the French Government. Such notifications of accession shall be deposited in the archives of that Government.

(c) The French Government shall transmit immediately to the Governments of all signatory and acceding countries certified copies of any such notifications, showing the dates on which they were received.

Art. 36.—The present convention shall come into force, in respect of the countries which have taken part in the first deposit of ratifications, one month after the date of the *procès-verbal* thereof. In the case of countries which ratify subsequently or accede thereto, and in respect of colonies, protectorates, overseas territories and territories under suzerainty or mandate not included in ratifications, the convention shall take effect one month after the date of receipt of the notifications provided for in articles 33, paragraph (d) ; 34, paragraph (b) ; 35, paragraph (b).

Art. 37.—The present convention shall not be capable of being denounced until a period of five years has elapsed since the date of its coming into force.

Thereafter notifications of denunciation may be addressed to the Government of the French Republic and shall take effect one year after the date of their receipt. Certified copies of such

notifications, showing the date on which they were received, shall be immediately transmitted by the Government of the French Republic to the Governments of all countries which have signed or acceded to the present convention.

The provisions of the present article apply also to colonies, protectorates, overseas territories and territories under suzerainty or mandate.

Art. 38.—If, by reason of denunciations, the number of contracting countries is reduced to less than seven, the Government of the French Republic shall immediately summon an international conference to consider what measures shall be taken.

Art. 39.—The Government of the French Republic shall communicate to the International Bureau copies of all ratifications, accessions and denunciations.

Art. 40.—The present convention shall remain open for signature at Paris until the 30th April, 1929.

In faith whereof the undermentioned plenipotentiaries have signed the present convention.

Done at Paris on the 22nd November, 1928, in one copy which shall be deposited in the archives of the Government of the French Republic, and of which certified copies shall be transmitted through the diplomatic channel to the Governments of all countries represented at the Conference of Paris.

*[Signatures of plenipotentiaries of the  
respective Governments of the  
countries participating, which  
follow in alphabetical order in  
French.]*

#### CONCORDAT

§ 605. *Concordat between the Holy See and Poland. Rome, February 10, 1925.*<sup>1</sup>

Au nom de la Très-Sainte et Indivisible Trinité.

Sa Sainteté le Pape Pie XI et le Président de la République de Pologne, M. Stanislas Wojciechowski,

Animés du désir de déterminer la situation de l'église catholique en Pologne et d'établir les règles qui régiront d'une manière digne et stable les affaires ecclésiastiques sur le territoire de la République,

Ont décidé à ces fins de conclure un concordat.

En conséquence Sa Sainteté le Pape Pie XI et le Président de la République de Pologne, M. Stanislas Wojciechowski, ont nommé leurs plénipotentiaires respectifs : *[names]*

Les plénipotentiaires susnommés, après l'échange de leurs pleins pouvoirs, ont arrêté les dispositions suivantes, auxquelles désormais les hautes parties contractantes s'engagent à se conformer.

<sup>1</sup> *Br. and For. State Papers*, cxxii. 835.

Art. 1<sup>er</sup>.—L'Église catholique, sans distinction de rites, jouira dans la République de Pologne d'une pleine liberté. L'État garantit à l'Église le libre exercice de son pouvoir spirituel et de sa juridiction ecclésiastique, de même que la libre administration et gestion de ses affaires et de ses biens, conformément aux lois divines et au droit canon.

(Arts. 2 to 26.)

Art. 27.—Le présent concordat entrera en vigueur 2 mois après l'échange des actes de sa ratification.

[*Seals and signatures.*]

*Concordat between the Holy See and Italy. Rome, February 11, 1929.*

(*Translation.*)

In the name of the Most Holy Trinity.

Whereas from the commencement of the negotiations between the Holy See for the settlement of the "Roman question," the Holy See itself proposed that the treaty relating to that question should be accompanied, as a necessary complement, by a concordat for the regulation of the conditions governing religion and the Church in Italy ;

And whereas the treaty for the settlement of the "Roman question" has this day been concluded and signed :

His Holiness Pius XI, the Supreme Pontiff, and His Majesty Victor Emmanuel III, King of Italy, have resolved to conclude a concordat, and for that purpose have appointed the same plenipotentiaries who were delegated for that treaty, viz. : [*names*], who, having exchanged their full powers, which were found to be in good and due form, have agreed on the following articles :

Art. 1.—In accordance with Article 1 of the treaty, Italy shall assure to the Catholic Church the free exercise of spiritual power and the free and public exercise of worship, as well as of its jurisdiction in ecclesiastical matters, in accordance with the provisions of the present concordat. Where it is necessary Italy shall afford to ecclesiastics the protection of her authorities for the acts of their spiritual ministry.

Having regard to the sacred character of the Eternal City, the Episcopal See of the Supreme Pontiff, the centre of the Catholic world and the goal of pilgrimages, the Italian Government shall adopt measures to prevent in Rome all that may conflict with that character.

(Arts. 2 to 44.)

Art. 45.—The present concordat shall enter into operation on the exchange of ratifications, at the same time as the treaty concluded between the same high parties for the elimination of the "Roman question." . . .

Rome, the 11th February, 1929.

[*Seals and Signatures.*]

## ADDITIONAL ARTICLES

§ 606. These are sometimes appended to a treaty in relation to some subsidiary matter, or in qualification of a provision in the main instrument, and signed at the same time as the latter. At the Congress of Vienna, Additional Articles were signed on May 30, 1814, and November 2, 1815, each to the effect that it "aura la même force et valeur que s'il était inséré mot-à-mot au traité de ce jour. Il sera compris dans la ratification dudit traité."<sup>1</sup>

§ 607. Occasionally they are incorporated in the treaty itself. The Protocol of October 13, 1921, between Austria and Hungary, relative to Western Hungary, has an Additional Article included within, and signed with, the Protocol.<sup>2</sup> More often they form a subsidiary compact, signed with, and regarded as an integral part of, the main instrument, and subject to like conditions as to ratification. They are even to be found styled "Annex," as in the example appended, but this is unusual, for most annexes to a treaty are referred to in the body of the treaty itself, and are attached to it in virtue of such reference.

§ 608. *Additional Article to the Extradition Treaty of January 19, 1922, between the United States and Venezuela. Caracas, January 21, 1922.*

The undersigned [*names of plenipotentiaries*] have agreed upon the following Additional Article to the Treaty of Extradition signed by the aforesaid on the 19th instant :

It is agreed that all differences between the Contracting Parties relating to the interpretation or execution of this treaty shall be decided by arbitration.

In witness whereof they have signed the above Article, and have hereunto affixed their seals.

Done in duplicate at Caracas, this 21st day of January, 1922.<sup>3</sup>

[*Seals and signatures.*]

§ 609. *Annex to Provisional Agreement between Great Britain and the Netherlands relating to Air Navigation. The Hague, July 11, 1923.*

## Annex

1. For the purpose of flights within the limits of and above its own territory each of the contracting parties has the right to refuse to recognise certificates of competency and licences granted to one of its nationals by the other contracting state.

2. It is agreed that the establishment of a regular service to and

<sup>1</sup> *Brit. and For. State Papers*, i. 172 ; iii. 292.

<sup>2</sup> *Ibid.*, cxiv. 624.

<sup>3</sup> *Ibid.*, cxviii. 1141.

from one of the contracting states and within that state may be made subject to special regulations by that state.

3. The present Annex shall be considered as an integral part of the above agreement.<sup>1</sup>

§ 610. Additional Articles are sometimes concluded at a later date, as agreements between Governments, and occasionally styled Additional Act, in amplification or modification of the provisions of a former treaty ; in this event they may or may not provide for ratification. More often, however, these objects are accomplished by means of supplementary conventions, agreements or protocols, though in the case of postal, telegraphic or monetary Agreements, when these are modified, the term Additional Articles is frequently applied.

§ 611. *Additional Articles to the Franco-Danish Commercial Convention of February 9, 1842. Copenhagen, February 9, 1910.*

Les Soussignés [*names and official designations*], dûment autorisés à cet effet, sont convenus des articles additionnels suivants à la Convention de Commerce et de Navigation, signée à Paris, le 9 février, 1842.

(Articles 1 and 2.)

3. Les présents articles auront la même force et valeur que s'ils faisaient partie intégrale de la Convention précitée du 9 février, 1842 ; ils seront appliqués dans les mêmes limites géographiques et cesseront leurs effets en même temps que ladite Convention en cas où celle-ci viendrait à être dénoncée.

4. Les présents articles, expédiés en double, entreront en vigueur un mois après leur signature.<sup>2</sup>

[*Place, date.*]

[*Seals and signatures.*]

§ 612. *Additional Act to the Italo-Swiss Fishery Convention of June 13, 1906. Rome, February 8, 1911.*

(Preamble.)

Allo scopo di risolvere alcune questioni sorte nella applicazione della convenzione fra l'Italia e la Svizzera, conclusa a Lugano il 13 giugno 1906 e le cui ratifiche furono scambiate il 27 luglio 1906 in Roma, per l'esercizio della pesca nelle acque comuni ai due Stati,

i sottoscritti, in nome dei loro governi, e debitamente all'uopo autorizzati, hanno convenuto quanto segue :

(Articles 1 to 8.)

9. Il presente atto addizionale sarà ratificato e le ratifiche saranno scambiate il più presto possibile.

Fatto a Roma, in doppio esemplare, l'8 febbraio 1911.<sup>3</sup>

[*Official designations and signatures.*]

<sup>1</sup> *Br. and For. State Papers*, cxix. 453.

<sup>2</sup> *Ibid.*, ciii. 417.

<sup>3</sup> *Nouveau Recueil Général*, 3<sup>me</sup> Série, vii. 867.

§ 613. *Additional Act to the British-Bolivian Convention of April 5, 1920, respecting False Indications of Origin. La Paz, March 14, 1921.*

Whereas certain errors have been found to exist in the text of the Convention respecting false indications of origin as signed between Great Britain and the Republic of Bolivia on the 5th April, 1920, [*names of plenipotentiaries*] having met together at the Ministry for Foreign Affairs at La Paz, have agreed upon the following corrections to be made in the text of the said Convention :

(Two corrections.)

In faith whereof the undersigned, duly authorised to this effect, have signed the present Additional Act in the City of La Paz, this 14th day of March, 1921, and have affixed thereto their respective seals.<sup>1</sup>

[*Seals and signatures.*]

## FINAL ACT

§ 614. Final Act (*Acte Final*) is usually a formal statement or summary of the proceedings of a congress or conference, enumerating the treaties or conventions drawn up as the result of its deliberations, with, it may be, certain recommendations, or "vœux," deemed to be desirable. The signature of an instrument of this kind commits the signatories to no more than it contains, and does not in itself entail acceptance of the treaties or conventions so enumerated, which require separate signature, as, *e.g.*, the *Acte Final* of the Lausanne Conference concerning the Turkish Peace Settlement, signed at Lausanne, July 24, 1923. At the Hague Peace Conference of 1899 it was debated whether the instrument in which the results were to be summed up should be styled *Acte*, *Protocole*, or *Procès-Verbal Final* ; the phrase *Acte Final* was eventually preferred.<sup>2</sup>

§ 615. *Final Act of the First International Peace Conference held at The Hague, 1899.*

(The Preamble relates how the Conference was invited, and how it met.

Then follow the names of the delegates representing each Power taking part.

Enumeration of the Conventions and Declarations annexed, which remained open for signature until December 31, 1899.

Resolution adopted : That the Conference considered the limitation of the charges which lay heavy on the world greatly to be desired for the increase of the material and moral welfare of humanity.

<sup>1</sup> *Br. and For. State Papers*, cxiv. 189.

<sup>2</sup> *Satow, International Congresses*, 20.

Six recommendations (*vœux*)).

“En foi de quoi les plénipotentiaires ont signé le présent acte, et y ont apposé leurs cachets.

“Fait à La Haye le 29 juillet, 1899, en un seul exemplaire, qui sera déposé au Ministère des Affaires Étrangères, et dont des copies, certifiées conformes, seront délivrées à toutes les Puissances représentées à la Conférence.”

§ 616. The Final Act of the Second Peace Conference at The Hague in 1907 was drawn up in precisely the same form.

§ 617. *Final Act of the Geneva Conference, 1929, regarding the Wounded and Sick in Armies in the Field, and the Treatment of Prisoners of War.*

The Preamble states the purpose of the Conference, viz. : the revision of the Red Cross Convention of 1906, and the elaboration of a code relating to prisoners of war.

Then follows a list of the countries represented, with the names of the delegates and their staffs, a short recital of the proceedings, viz. : the appointment of a president, the formation of two commissions to deal with the respective subjects, together with the names of those who presided over them, and the fact that the second commission divided into two sub-divisions, with the names of their presidents.

A statement that the Conference has drawn up for signature by the plenipotentiaries two conventions, bearing to-day's date (July 27, 1929), with their titles. (These Conventions by their terms remained open for signature until February 1, 1930.)

Six recommendations (*vœux*).

“En foi de quoi les délégués ont signé le présent Acte final.

“Fait à Genève, le 27 juillet 1929, en un seul exemplaire, qui sera déposé aux archives de la Confédération Suisse, et dont des copies, certifiées conformes, seront remises à tous les Pays représentés à la Conférence.”<sup>1</sup>

## GENERAL ACT

§ 618. But sometimes, as in the case of the *Acte Final* of the Congress of Vienna, 1815, the instrument may itself become a treaty by declaring that the separate treaties and conventions, which are annexed, have the same force as if they were textually included. Or, as in the *Acte Général* of the Berlin Conference of 1885, concerning African matters (spoken of as the *Acte Final*, until in the course of the ninth protocol its designation was changed), the various declarations, etc., are incorporated in a single instrument and styled “General Act.” Such a General Act does not differ essentially from a treaty.

<sup>1</sup> *Parliamentary Paper, Misc., No. 7 (1931).*

§ 619. Further instances of the use of the term are the General Act of the Brussels Conference of 1890 relative to the African Slave Trade, and the General Act of the Algeciras Conference of 1906 relative to the Affairs of Morocco ; while a recent one is the General Act of September 26, 1928, for the Pacific Settlement of International Disputes, prepared under the auspices of the League of Nations, and providing, not for signature by plenipotentiaries, but for accessions thereto, to the extents set out therein, and subject, if necessary, to certain specified reservations.<sup>1</sup>

<sup>1</sup> *Treaty Series*, No. 32 (1931).

## CHAPTER XXIV

### TREATIES AND OTHER INTERNATIONAL COMPACTS (continued)

#### DECLARATION, AGREEMENT

##### DECLARATION

§ 620. THE term Declaration is used in various senses. It may relate to communications made by states as "an explanation and justification of a line of conduct pursued by them in the past, or an explanation of views and intentions concerning certain matters"; or to such acts as declarations of war, or of neutrality, or concerning contraband, etc.<sup>1</sup>

Here it is used as

"the title of a body of stipulations of a treaty according to which the parties undertake to pursue in future a certain line of conduct."<sup>1</sup>

"The attempt to distinguish fundamentally between a 'declaration' and a 'convention' by maintaining that, whereas a 'convention' creates rules of particular international law between the contracting states only, a 'declaration' contains the recognition, on the part of the best qualified and most interested Powers, of rules of universal international law, does not stand the test of scientific criticism."<sup>2</sup>

§ 621. International compacts involving matters of high importance are sometimes recorded in the form of a Declaration. The Declaration of Paris, 1856, the Declaration of St. Petersburg, 1868, and the Declaration of London, 1909, are notable instances of Declarations aimed at the definition of rules of international law.

Of equal importance are the Declaration between the British and French Governments of April 8, 1904, relating to Egypt and Morocco, and the Declaration between the British, French and Russian Governments of September 5, 1914, undertaking not to conclude peace separately.

<sup>1</sup> Oppenheim, i. § 487.

<sup>2</sup> *Ibid.*, i. § 508.

§ 622. *Declaration of Paris, April 16, 1856.*

Les Plénipotentiaires qui ont signé le Traité de Paris du 30 mars 1856, réunis en Conférence,

Considérant :

Que le droit maritime, en temps de guerre, a été pendant longtemps l'objet de contestations regrettables :

Que l'incertitude du droit et des devoirs en pareille matière, donne lieu, entre les neutres et les belligérants, à des divergences d'opinion qui peuvent faire naître des difficultés sérieuses et même des conflits ;

Qu'il y a avantage, par conséquent, à établir une doctrine uniforme sur un point aussi important ;

Que les Plénipotentiaires assemblés au Congrès de Paris ne sauraient mieux répondre aux intentions dont leurs Gouvernements sont animés, qu'en cherchant à introduire dans les rapports internationaux des principes fixes à cet égard ;

Dûment autorisés, les susdits Plénipotentiaires sont convenus de se concerter sur les moyens d'attendre ce but ; et étant tombés d'accord ont arrêté la Déclaration solennelle ci-après :

1. La course est et demeure abolie.
2. Le pavillon couvre la marchandise ennemie, à l'exception de la contrebande de guerre.
3. La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi ;
4. Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire, maintenus par une force suffisante pour interdire réellement l'accès du littoral ennemi.

Les Gouvernements des Plénipotentiaires soussignés s'engagent à porter cette Déclaration à la connaissance des États qui n'ont pas été appelés à participer au Congrès de Paris, et à les inviter à y accéder.

Convaincus que les maximes qu'ils viennent de proclamer ne sauraient être accueillies qu'avec gratitude par le monde entier, les Plénipotentiaires soussignés ne doutent pas que les efforts de leurs Gouvernements pour en généraliser l'adoption ne soient couronnés d'un plein succès.

La présente Déclaration n'est et ne sera obligatoire qu'entre les Puissances qui y ont ou qui y auront accédé.

Fait à Paris, le 16 avril, 1856.

Extract from Protocole No. 24—

Séance du 16 avril, 1856.

Sur la proposition de M. le Comte Walewski, et reconnaissant qu'il est de l'intérêt commun de maintenir l'indivisibilité des quatre principes mentionnés à la Déclaration signée en ce jour, MM. les Plénipotentiaires conviennent que les Puissances qui l'auront signée ou qui y auront accédé, ne pourront entrer, à l'avenir, sur l'application du droit des neutres en temps de guerre en aucun arrangement qui ne repose à la fois sur les quatre principes objet de la dite Déclaration.

§ 623. *Declaration between Great Britain and France respecting Egypt and Morocco. London, April 8, 1904.*<sup>1</sup>

Art. 1.—His Britannic Majesty's Government declare that they have no intention of altering the political status of Egypt.

The Government of the French Republic, for their part, declare that they will not obstruct the action of Great Britain in that country by asking that a limit of time be fixed for the British occupation or in any other manner, and that they give their assent to the draft Khedivial Decree annexed to the present Arrangement, containing the guarantees considered necessary for the protection of the interests of the Egyptian bondholders, on the condition that, after its promulgation, it cannot be modified in any way without the consent of the Powers Signatory of the Convention of London of 1885.

It is agreed that the post of Director-General of Antiquities in Egypt shall continue, as in the past, to be entrusted to a French *savant*.

The French schools in Egypt shall continue to enjoy the same liberty as in the past.

Art. 2.—The Government of the French Republic declare that they have no intention of altering the political status of Morocco.

His Britannic Majesty's Government, for their part, recognise that it appertains to France, more particularly as a Power whose dominions are conterminous for a great distance with those of Morocco, to preserve order in that country, and to provide assistance for the purpose of all administrative, economic, financial, and military reforms which it may require.

They declare that they will not obstruct the action taken by France for this purpose, provided that such action shall leave intact the rights which Great Britain, in virtue of Treaties, Conventions, and usage, enjoys in Morocco, including the right of coasting trade between the ports of Morocco, enjoyed by British vessels since 1901.

(Arts. 3 to 8, relating to French treaty rights in Egypt, commercial liberty in Egypt and Morocco, French officials in Egypt, Suez Canal, Straits of Gibraltar, Spanish interests in Morocco.)

Art. 9.—The two Governments agree to afford to one another their diplomatic support, in order to obtain the execution of the clauses of the present Declaration regarding Egypt and Morocco.

In witness whereof his Excellency the Ambassador of the French Republic at the Court of His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and His Majesty's Principal Secretary of State for Foreign Affairs, duly authorised for that purpose, have signed the present Declaration and have affixed thereto their seals.

Done at London, in duplicate, the 8th day of April, 1904.

[*Seals and signatures.*]

<sup>1</sup> *Treaty Series*, No. 6 (1905).

§ 624. *Declaration between the French, Russian and British Governments after the Outbreak of War. London, September 5, 1914.*<sup>1</sup>

The undersigned, duly authorised thereto by their respective Governments, hereby declare as follows :

The French, Russian and British Governments mutually engage not to conclude peace separately during the present war.

The three Governments agree that when terms of peace come to be discussed no one of the Allies will demand conditions of peace without the previous agreement of each of the other Allies.

In faith whereof the undersigned have signed this Declaration, and have affixed thereto their seals.

Done at London in triplicate, this 5th day of September, 1914.

[Seals and signatures.]

(Japan acceded to this declaration by an exchange of notes, October 19, 1915. A declaration was signed by the representatives of the above four Powers and of Italy, in quintuplicate, November 30, 1915, containing the same undertaking.)

§ 625. *Declaration recognising the Right to a Flag of States having no Sea Coast. Barcelona, April 20, 1921.*<sup>2</sup>

The undersigned, duly authorised for the purpose, declare that the states which they represent recognise the flag flown by the vessels of any state having no sea coast which are registered at some one specified place situated in its territory ; such place shall serve as the port of registry of such vessels.

Barcelona, the 20th April, 1921, done in a single copy, of which the English and French texts shall be authentic.

[Signatures.]

(The above simple declaration was signed by the representatives of thirty-one countries, and was ratified, and acceded to, though there is no actual provision in it for either formality.)

§ 626. Declarations are often appended to a treaty or convention, to form a subsidiary compact, or to place on record some understanding reached, or some explanation given. The Treaty of Peace with Turkey, signed at Lausanne, July 24, 1923, is supplemented by four Declarations, relating respectively to amnesties, Moslem properties in Greece, sanitary matters, and administration of justice, in addition to a number of conventions and protocols on other matters.

§ 627. *Declaration annexed to "L'Acte préliminaire de Paix" between Turkey and Greece of September 6/18, 1897.*<sup>3</sup>

En procédant à la signature des Préliminaires de Paix en date de ce jour, S.E. le Ministre des Affaires Etrangères de S.M.I. le

<sup>1</sup> *Br. and For. State Papers*, cviii. 365.

<sup>2</sup> *Ibid.*, cxvi. 544.

<sup>3</sup> *Ibid.*, xc. 549.

Sultan déclare que dans la pensée du Gouvernement Ottoman la médiation qui vient d'être exercée par les Six Grandes Puissances pour le rétablissement de la paix et pour la fixation de la base des relations futures entre la Turquie et la Grèce ne doit en rien influencer sur le mandat d'arbitre que les Représentants des dites Puissances peuvent être appelés éventuellement à remplir en vertu de l'Article IX de ces Préliminaires de Paix, et en conséquence les arbitres auront, comme de règle, la plus parfaite plénitude d'appréciation des points ou des questions qui leur auront été soumis par les Parties.

LL. EE. les Ambassadeurs prennent acte de cette observation et reconnaissent qu'elle est conforme au sens de l'Article IX.

[Signatures.]

§ 628. *Declaration between Germany and Poland on the Exchange of Ratifications of the Convention of May 15, 1922, relative to Upper Silesia. Oppeln, June 3, 1922.*<sup>1</sup>

Au moment de procéder à l'échange des ratifications sur la Convention germano-polonaise relative à la Haute-Silésie, faite à Genève le 15 mai 1922, le représentant du gouvernement polonais et le représentant du gouvernement allemand, dûment autorisés à cet effet, déclarent d'un commun accord, que le principe énoncé au § 3 de l'Article 1 de ladite Convention du maintien en vigueur de lois allemandes postérieures à l'entrée en vigueur du Traité de Versailles, lorsque ces lois ont reçu l'assentiment tacite de la Commission interalliée, s'applique seulement aux lois dont le maintien en vigueur, conformément aux dispositions du § 3, alinéa 3, de l'annexe à l'article 88 du Traité de Versailles, a fait l'objet d'un décret régulièrement pris par la Commission interalliée, et promulgué par elle au "Journal Officiel" de la Haute-Silésie.

La présente déclaration constitue partie intégrante de la Convention précitée, et, par conséquent, est comprise dans les ratifications respectives, sous réserve de l'approbation ultérieure par les autorités compétentes de chaque État.

Fait à Oppeln, en double expédition, le 3 juin, l'an 1922.

[Signatures.]

§ 629. *Declaration appended to the Treaty of Commerce between Great Britain and Austria. London, May 22, 1924.*<sup>2</sup>

It is understood that nothing in the Treaty signed this day can be invoked by Austria to support a claim for exemption from the following disabilities to which Austrian nationals (in common with the nationals of other Powers with which His Britannic Majesty

<sup>1</sup> *Br. and For. State Papers*, cxviii. 585.

<sup>2</sup> *Ibid.*, cxix. 336.

was at war) are subject by Acts of Parliament of the United Kingdom, so long as those Acts remain in force, namely :

(Three clauses.)

Done at London in duplicate, in English and German texts, the 22nd May, 1924.

[Seals and signatures.]

§ 630. *Declaration annexed to the Treaty of Commerce and Navigation between Great Britain and Greece. London, July 16, 1926.*<sup>1</sup>

It is well understood that the Treaty of Commerce and Navigation between Great Britain and Greece of to-day's date does not prejudice claims on behalf of private persons based on the provisions of the Anglo-Greek Commercial Treaty of 1886, and that any differences which may arise between our two Governments as to the validity of such claims shall, at the request of either Government, be referred to arbitration, in accordance with the provisions of the Protocol of November 10, 1886, annexed to the said treaty.

Done at London, the 16th July, 1926.

[Signatures.]

§ 631. The title Declaration is also frequently given to agreements between governments regarding some minor matter, and has been used in this way for a considerable number of agreements on such subjects as modification of a former convention, execution of letters of request, recognition of tonnage certificates, fishery regulations, etc. These may or may not provide for ratification.

§ 632. *Declaration modifying the North Sea Fisheries Convention of May 6, 1882. The Hague, February 1, 1889.*<sup>2</sup>

Les Gouvernements signataires de la Convention conclue à La Haye le 6 mai 1882, pour régler la police de la pêche dans la Mer du Nord, en dehors des eaux territoriales, ayant jugé utile de modifier la teneur du paragraphe 5 de l'article 8, sont convenus de ce qui suit :

Art. 1.—Le paragraphe 5 de l'article 8 de la Convention du 6 mai 1882 est remplacé par la disposition suivante :

Art. 2.—La date de l'entrée en vigueur de la présente déclaration sera fixée lors du dépôt des ratifications, qui aura lieu à La Haye aussitôt que faire se pourra, et de la même manière dont s'est effectué le dépôt des ratifications de la Convention du 6 mai 1882.

En foi de quoi, les Plénipotentiaires respectifs ont signé la présente Déclaration et y ont apposé leur cachets.

Fait à la Haye, le 1<sup>er</sup> février 1889 en six exemplaires.<sup>2</sup>

[Seals and signatures.]

<sup>1</sup> *Treaty Series*, No. 2 (1927).

<sup>2</sup> *Nouveau Recueil Général*, 2<sup>me</sup> série, xv. 568.

§ 633. *Declaration regarding the Delimitation of the Frontier between the Cameroons and French Equatorial Africa. Paris, September 28, 1912.*<sup>1</sup>

Le Gouvernement de S.M. l'Empereur d'Allemagne, Roi de Prusse [in the German text "Die Kaiserlich Deutsche Regierung"], et le Gouvernement de la République Française, désirant, en vue de l'Exécution de la Convention signée à Berlin le 4 novembre 1911, déterminer la frontière entre le Cameroun et l'Afrique Équatoriale Française, préciser les conditions de la remise des territoires échangés et régler certaines questions connexes, ainsi qu'il a été prévu par les articles 3 et 5 de la convention du 4 novembre 1911 précitée, sont convenus de ce qui suit :

[Consisting of

(1) Arrangement relatif à la délimitation entre le Cameroun et l'Afrique Equatoriale Française conformément à l'accord du 4 novembre 1911 (37 articles in 4 chapters) ; (2) Arrangement relatif à la remise des territoires à échanger entre le Cameroun et l'Afrique Equatoriale Française (20 articles) ; (3) Convention relative au régime des concessions (50 articles).]

En foi de quoi les Soussignés ont dressé la présente Déclaration qu'ils ont revêtue de leur sceau.

Fait à Paris, en double exemplaire, le 20 septembre 1912.

[Seals and signatures.]

§ 634. *Declaration by Great Britain and France respecting Oyster Fisheries outside Territorial Waters in the English Channel. Paris, September 29, 1923.*<sup>2</sup>

The Government of His Britannic Majesty and the Government of the French Republic, desiring to regulate the period for Oyster dredging outside territorial waters in the English Channel, have agreed upon the following provisions :

(Arts. 1 to 4.)

5. It is understood that the foregoing stipulations are also applicable to the Irish Free State, the Government of which has given its assent thereto.

6. The present declaration shall come into force on the 1st October, 1923. It shall be read as one with the regulations for the guidance of fishermen prepared in pursuance of Art. 2 of the Convention of 1839 above referred to.

In witness whereof the undersigned have signed the present declaration in duplicate, and have affixed thereto their seals.

Done at Paris the 29th September, 1923.

[Seals and signatures.]

<sup>1</sup> *Nouveau Recueil Général*, 3<sup>m</sup>e série, vii. 135-88.

<sup>2</sup> *Br. and For. State Papers*, cxvii. 311.

§ 635. *Declaration between Austria and France regarding Transmission of Legal Documents, and Execution of Letters of Request. Paris, March 4, 1925.*<sup>1</sup>

Le Gouvernement de la République française et le Gouvernement de la République d'Autriche ayant résolu de conclure un accord au sujet de la transmission des actes judiciaires et de l'exécution des commissions rogatoires en matières civile et commerciale, les soussignés, dûment autorisés à cet effet, sont convenus des dispositions suivantes :

(Arts. 1 to 7.)

8. Toutes les difficultés résultant de la présente déclaration seront réglées par la voie diplomatique.

9. La présente déclaration entrera en vigueur 1 mois après sa signature. Ses effets cesseront à l'expiration d'un délai de 6 mois à partir de la dénonciation notifiée par l'une ou l'autre partie contractante.

En foi de quoi les plénipotentiaires soussignés ont signé la présente déclaration et y ont apposé leurs cachets.

Fait à Paris, le 4 mars 1925, en double exemplaire.

[Seals and signatures.]

§ 636. *Declaration between Denmark and Sweden for the Reciprocal Recognition of Tonnage Certificates. Stockholm, November 21, 1925.*<sup>2</sup>

(Translation).

We, the undersigned, thereto duly empowered by our respective Governments, have jointly agreed to the following declaration concerning the reciprocal recognition of Swedish and Danish tonnage certificates issued on the basis of the rules for ship measurement adopted in Sweden and Denmark, in Sweden the so-called German rule, and in Denmark the so-called British rule.

(Arts. 1 to 7.)

In witness whereof we have signed this declaration and affixed thereto our seals.

Done in duplicate at Stockholm, the 21st November, 1925.

[Seals and signatures.]

§ 637. *Declaration between Great Britain, with the Irish Free State, and France, regarding French Fisheries in Granville Bay. London, December 20, 1928.*<sup>3</sup>

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Irish Free State on the one hand, and the Government of the French Republic on the other hand,

<sup>1</sup> *Br. and For. State Papers*, cxxii. 81.

<sup>2</sup> *Treaty Series*, No. 2 (1929).

<sup>3</sup> *Ibid.*, cxxii. 405.

Considering that since the time of conclusion of the Anglo-French Convention of the 2nd August, 1839, and the Regulations of the 24th May, 1843, concerning the fisheries in the waters situated between the coasts of France and the coasts of Great Britain and Northern Ireland and of the Irish Free State, changes have occurred in the condition of the places in which are situated the marks used to define the limiting line of the zone reserved for French fishers in Granville Bay,

Considering that, in consequence, it is necessary to re-define the bearings employed to determine the various salient points of this limiting line,

Have agreed to substitute for Article 1 (paragraphs 2 and following) of the Convention of the 2nd August, 1839, and for Article 4 (paragraphs 3 and following) of the Regulations of the 24th May, 1843, the subjoined text :

(Bearings specified.)

The present declaration shall come into force on the 20th January, 1929.

It shall be incorporated with the said articles of the Convention of the 2nd August, 1839, and of the Regulations of the 24th May, 1843, enacted to carry that Convention into effect.

In witness whereof the undersigned have signed the present declaration in triplicate, and have affixed thereto their seals.

Done at London, the 20th December, 1928.

[Seals and signatures.]

#### AGREEMENT

§ 638. The same absence of strict formality is to be found in international compacts entitled Agreements, or sometimes Arrangements. The former term might seem to imply an undertaking somewhat more definite than the latter, but this is not apparent. What in English is styled Agreement may be *Accord* or *Arrangement* in French. In international compacts concluded under the auspices of the League of Nations, where both English and French texts have equal validity, "arrangement" in the French text is usually rendered "agreement" in the English text. In German, *Vereinbarung* is used for both, also *Abkommen*. In Spanish, arrangement is rendered *protocolo* ; *convenzione* in Italian, and *convenio* in Spanish are found as equivalents of the English "agreement," though doubtless a more accurate translation for both would be "convention."

§ 639. Agreements are ordinarily concluded between governments ; occasionally between heads of states. General agreements, to which many states are parties, have been concluded on such subjects as false indications of origin of goods ; suppression of obscene publications ; public health ; pharmacopœial formulas ; venereal disease, etc. ; while similar

agreements, some of which are between heads of states, have been concluded, under the auspices of the League of Nations, concerning such matters as the manufacture of and trade in prepared opium ; export of hides, skins and bones ; transit cards for emigrants, etc.

§ 640. *International Agreement regarding False Indications of Origin on Goods. The Hague, November 6, 1925.*<sup>1</sup>

Les Soussignés, dûment autorisés par leurs Gouvernements respectifs, ont, d'un commun accord, arrêté le texte suivant, qui remplacera l'arrangement de Madrid du 14 avril 1891, révisé à Washington le 2 juin 1911, savoir :

(Arts. 1 to 5.)

Art. 6.—Le présent Acte sera ratifié et les ratifications en seront déposées à La Haye au plus tard le 1<sup>er</sup> mai 1928.

Il entrera en vigueur, entre les pays qui l'auront ratifié, un mois après cette date et aura la même force et durée que la Convention générale. Toutefois, si auparavant il était ratifié par six pays au moins, il entrerait en vigueur, entre ces pays, un mois après que le dépôt de la sixième ratification leur aurait été notifiée par le Gouvernement de la Confédération suisse et pour les pays qui ratifieraient ensuite, un mois après la notification de chacune de ces ratifications.

Le présent Acte remplacera, dans les rapports entre les pays qui l'auront ratifié, l'Arrangement conclu à Madrid le 14 avril 1891 et révisé à Washington le 2 juin 1911. Ce dernier restera en vigueur dans les rapports avec les pays qui n'auront pas ratifié le présent Acte.

En foi de quoi, les Plénipotentiaires respectifs ont signé le présent Arrangement.

Fait à La Haye, en un seul exemplaire, le 6 novembre 1925.

[*Signatures in alphabetical order of countries.*]

§ 641. Agreements are occasionally appended to treaties or conventions, in completion of their stipulations. The Treaty of Alliance between Great Britain and Iraq of October 10, 1922, was accompanied by four agreements, subsidiary to Articles 2, 7, 9 and 15, and relating to British officials, military, judicial and financial arrangements, which were signed by the plenipotentiaries of the respective heads of states, and were included in the ratifications exchanged on December 19, 1924. The Treaty of Friendship between Germany and the Soviet Union of October 12, 1925, comprised seven agreements, relating to conditions of residence and business, economic, railway, navigation and fiscal matters, commercial courts of arbitration, and protection of industrial property ; these agreements, with

<sup>1</sup> *Treaty Series*, No. 15 (1928).

the general clauses of the treaty, constituting a single whole, so that the expression "treaty" included the agreements. The International Convention for the Abolition of Import and Export Prohibitions and Restrictions, signed at Geneva, November 8, 1927, has appended to it an agreement also between heads of states, signed at Geneva, July 11, 1928, intended to supplement and to form an integral part of it.

§ 642. The Agreement form is that commonly used for compacts between governments, and may relate to any matter not sufficiently important to be enshrined in a treaty or convention. But exceptional cases occur, and among these must be included the Agreement between Great Britain and Japan of July 11, 1911, extending the provisions of the alliance concluded in 1902, and renewed in 1905. The preliminaries of peace between Italy and Turkey in 1912 took the form of an agreement between heads of states.

Agreements between governments sometimes provide for ratification, but more often do not.

§ 643. *Agreement between Great Britain and Japan relative to China, Eastern Asia and India.* London, July 13, 1911.<sup>1</sup>

The Government of Great Britain and the Government of Japan, having in view the important changes which have taken place in the situation since the conclusion of the Anglo-Japanese Agreement of the 12th August, 1905, and believing that a revision of that Agreement responding to such changes would contribute to general stability and repose, have agreed upon the following stipulations to replace the Agreement above mentioned, such stipulations having the same object as the said Agreement, namely :

(a) The consolidation and maintenance of the general peace in the regions of Eastern Asia and of India ;

(b) The preservation of the common interests of all Powers in China by insuring the independence and integrity of the Chinese Empire and the principle of equal opportunities for the commerce and industry of all nations in China ;

(c) The maintenance of the territorial rights of the High Contracting Parties in the regions of Eastern Asia and of India, and the defence of their special interests in the said regions :

(Arts. 1 to 5.)

Art. 6.—The present Agreement shall come into effect immediately after the date of its signature, and remain in force for ten years from that date.

In case neither of the High Contracting Parties should have notified twelve months before the expiration of the said ten years the intention of terminating it, it shall remain binding until the expiration of one year from the day on which either of the High

<sup>1</sup> *Br. and For. State Papers*, civ. 173.

Contracting Parties shall have denounced it. But if, when the date fixed for its expiration arrives, either ally is actually engaged in war, the alliance shall, *ipso facto*, continue until peace is concluded.

In faith whereof the undersigned, duly authorised by their respective Governments, have signed this Agreement, and have affixed thereto their Seals.

Done in duplicate at London, the 13th day of July, 1911.

[Seals and signatures.]

§ 644. *Agreement between Italy and Turkey for the Preliminaries of Peace. Lausanne, October 15, 1912.*<sup>1</sup>

S.M. le Roi d'Italie et S.M. l'Empereur des Ottomans, animés par un égal désir de faire cesser l'état de guerre existant entre les deux Pays et en vue de la difficulté d'y parvenir, provenant de l'impossibilité pour l'Italie de déroger à la loi du 25 février 1912 qui a proclamé sa souveraineté sur la Tripolitaine et sur la Cyrénaïque, et pour l'Empire Ottoman de formellement reconnaître cette souveraineté,

ont nommé Leurs Plénipotentiaires : [names]

lesquels, après avoir échangés leurs pleins pouvoirs respectifs, trouvés en bonne et due forme, sont convenus du *modus procedendi* secret suivant—

(Arts. 1 to 7.)

8. Les deux Hautes Parties Contractantes s'engagent à maintenir secret le présent Accord.

Toutefois les deux Gouvernements se réservent la faculté de rendre public cet Accord au moment de la présentation du Traité public (Annexe n. 4) aux Parlements respectifs.

Le présent Accord entrera en vigueur le jour même de sa signature.

9. Il est bien entendu que les Annexes mentionnées dans le présent Accord en forment partie intégrante.

En foi de quoi les Plénipotentiaires ont signé le présent Accord et y ont apposé leurs cachets.

Fait à Lausanne en deux exemplaires, le 15 octobre 1912.

[Seals and signatures.]

§ 645. *Political Agreement between France and Poland. Paris, February 19, 1921.*<sup>2</sup>

Le Gouvernement polonais et le Gouvernement français, également soucieux de sauvegarder, par le maintien des traités qui ont été signés en commun ou qui seront ultérieurement respectivement reconnus, l'état de paix en Europe, la sécurité et la défense de leur territoire ainsi que leurs intérêts mutuels politiques et économiques, ont convenu ce qui suit :

(Arts. 1 to 4.)

<sup>1</sup> *Nouveau Recueil Général*, vii. 3.

<sup>2</sup> *Br. and For. State Papers*, cxviii. 342.

Le présent Accord n'entrera en vigueur qu'après la signature des accords commerciaux actuellement en négociation.

Paris, le 19 février, 1921.

[Signatures.]

§ 646. *Agreement between Great Britain and the United States for the Renewal of the Arbitration Convention of April 4, 1908. Washington, June 23, 1923.*<sup>1</sup>

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and the President of the United States of America, being desirous of extending for another five years the period during which the Arbitration Convention concluded between them on the 4th April, 1908, extended by the Agreement concluded between the two Governments on the 31st May, 1913, and further extended by the Agreement concluded between the two Governments on the 3rd June, 1918, shall remain in force, have respectively authorised the undersigned, to wit: [names], to conclude the following Articles:

(Art. 1.)

2. The present Agreement shall be ratified by His Britannic Majesty, and by the President of the United States, by and with the advice and consent of the Senate thereof, and it shall become effective upon the date of the exchange of ratifications, which shall take place at Washington as soon as possible.

Done in duplicate this 23rd day of June, 1923.

[Seals and signatures.]

§ 647. *Commercial Agreement between Germany and Spain. Madrid, July 25, 1924.*<sup>2</sup>

(Translation.)

The Government of the German Reich and the Government of His Majesty the King of Spain, desirous of fostering commercial relations between the two countries and of placing them on a more solid basis, have decided to replace the *modus vivendi* in force up to the 30th June, 1924, by a commercial agreement, and have appointed for this purpose as their plenipotentiaries: [names]

Who, having communicated their full powers, found in good and due form, have agreed upon the following provisions:

(Arts. 1 to 8.)

9. The present agreement shall be ratified and the instruments of ratification shall be exchanged at Madrid as soon as the formalities prescribed by the legislation of the two states have been complied with.

The agreement shall come into force on the date of the exchange of the instruments of ratification and shall be operative until the

<sup>1</sup> *Br. and For. State Papers*, cxvii. 372.

<sup>2</sup> *Ibid.*, cxxii. 768.

expiry of a period of three months from the date of its denunciation by either of the contracting parties.

In faith whereof the plenipotentiaries of the two parties have signed the present agreement and have thereto affixed their seals.

Done at Madrid in duplicate, one copy in Spanish and the other in German, the 25th July, 1924.

[Seals and signatures.]

§ 648. *Agreement between Latvia and Norway respecting Tonnage Certificates. Riga, June 10, 1925.*<sup>1</sup>

Considérant que la méthode anglaise pour le jaugeage des navires (système Moorsom) est en vigueur tant en Norvège qu'en Lettonie, les soussignés, dûment autorisés à conclure un arrangement relatif à la reconnaissance mutuelle des certificats de jaugeage entre les deux pays, sont convenus de ce qui suit :

(Provisions.)

Le présent arrangement entrera en vigueur à partir de la date de sa signature.

Chacune des deux parties contractantes pourra en tout temps dénoncer le dit arrangement en donnant un préavis de 6 mois.

En foi de quoi les plénipotentiaires ont signé le présent arrangement.

Fait en double, à Riga, le 10 juin, 1925.

[Signatures.]

§ 649. *Agreement between Great Britain and Nejd regarding the Transjordan-Nejd Frontier. Bahra, November 2, 1925.*<sup>2</sup>

The High British Government on its own part and H.H. 'Abdu'l-Aziz ibn 'Abdu'r-Rahman-al-Faisal Al Sa'ud, Sultan of Nejd and its dependencies, on behalf of the Government of Nejd, on his part, in view of the friendly relations which exist between them, being desirous of fixing the frontier between Nejd and Transjordan and of settling certain questions connected therewith, the High British Government have named and appointed Sir Gilbert Clayton, K.B.E., C.B., C.M.G., as their commissioner and plenipotentiary, to conclude an agreement for this purpose with Sultan 'Abdu'l-Aziz ibn 'Abdu'r-Rahman-al-Faisal Al Sa'ud on behalf of Nejd.

In virtue of which the said Sultan 'Abdu'l-Aziz ibn 'Abdu'r-Rahman-al-Faisal Al Sa'ud and the said Sir Gilbert Clayton have agreed upon and concluded the following articles :

(Arts. 1-13.)

Art. 14.—This agreement will remain in force for so long as H.B.M. Government are entrusted with the mandate for Transjordan.

Art. 15.—The present agreement has been drawn up in two languages, English and Arabic, and each of the High Contracting

<sup>1</sup> *Br. and For. State Papers*, cxxii. 913.

<sup>2</sup> *Ibid.*, cxxi. 818.

Parties shall sign two English copies and two Arabic copies. Both texts shall have the same validity, but in case of divergence between the two in the interpretation of one or other of the articles of the present agreement, the English text shall prevail.

The present agreement will be known as "the Hadda Agreement."

Signed at Bahra Camp on the 2nd November, 1925 (corresponding to the 15th Rabi Thani 1344).

[Signatures.]

§ 650. *Agreement between Great Britain and Germany respecting Air Navigation. Berlin, June 29, 1927.*<sup>1</sup>

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, and the President of the German Reich, desiring to enter into an agreement relating to air navigation between Great Britain and Northern Ireland on the one hand and Germany on the other, have appointed as their plenipotentiaries for this purpose :

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, for Great Britain and Northern Ireland : [name]

The President of the German Reich : [name]  
who, after having communicated to each other their full powers, found in good and due form, have agreed as follows :

Art. 1. . . . For the purpose of the present Agreement the term "territory" means Great Britain and Northern Ireland on the one hand and Germany on the other including in both cases the territorial waters adjacent thereto, and the term "aircraft" means civil aircraft (including State aircraft used exclusively for commercial purposes) duly registered in the territory of either of the High Contracting Parties.

(Arts. 2 to 21.)

Art. 22.—The present Agreement shall be ratified, and the instruments of ratification shall be exchanged in Berlin, as soon as possible. This Agreement shall come into force on the day on which the instruments of ratification are exchanged.

In faith whereof the respective plenipotentiaries have signed the present Agreement and have affixed thereto their seals.

Done at Berlin in duplicate, in the English and German languages, which are equally authentic, the 29th June, 1927.

[Seals and signatures.]

<sup>1</sup> *Treaty Series*, No. 1 (1928).

## CHAPTER XXV

### TREATIES AND OTHER INTERNATIONAL COMPACTS (continued)

#### PROTOCOL, PROCÈS-VERBAL, EXCHANGE OF NOTES

##### PROTOCOL

§ 651. THE word Protocol is derived from the Low-Latin *protocollum*, Gr. πρωτόκολλον, the "first glued-in" to the book ; originally a register in which public documents were stuck. It then came to mean the form used in drawing up such documents, and in diplomacy the register in which the minutes of a conference are kept. It is also employed to signify the forms to be observed in the official correspondence of the minister for foreign affairs, and in the drafting of diplomatic documents, such as treaties, conventions, declarations, full powers, ratifications, letters of credence and other letters addressed by one head of state to another. In France *le bureau du protocole* is the sub-department charged with the preparation of such papers and the regulation of ceremonial in all such matters. In Great Britain it is the Treaty Department of the Foreign Office.

§ 652. Used to denote the form taken by an international compact, the word is regarded as describing the record of an agreement less formal than a treaty or convention.

§ 653. But in present practice international compacts of the highest importance may be cast in this form. No treaty could be of greater importance than the Protocol of December 16, 1920, establishing the Permanent Court of International Justice.

§ 654. Another Protocol of high importance is that concluded between "States" at Geneva on September 24, 1923, regarding the validity of agreements to submit to arbitration differences in connection with contracts concerning commercial matters, or any other matter capable of settlement by arbitration. This protocol is supplemented by a convention

between heads of states, signed at Geneva on September 26, 1927 ; probably a unique combination of forms.

§ 655. The Covenant of the League of Nations has been amended in various articles by a series of protocols, in which "the undersigned, being duly authorised, declare that they accept, on behalf of the Members of the League which they represent, the above amendment."

§ 656. The Air Navigation Convention between heads of states, signed at Paris, October 13, 1919, has been amended by a similar series of protocols, in which "the undersigned, duly authorised, declare their acceptance, on behalf of the states which they represent, of the foregoing amendment, which is proposed for the definitive approval of the contracting states."

§ 657. *Protocol establishing the Permanent Court of International Justice. Geneva, December 16, 1920.*<sup>1</sup>

The Members of the League of Nations, through the undersigned, duly authorised, declare their acceptance of the adjoined Statute of the Permanent Court of International Justice, which was approved by a unanimous vote of the Assembly of the League on the 13th December, 1920, at Geneva.

Consequently, they hereby declare that they accept the jurisdiction of the Court in accordance with the terms and subject to the conditions of the above-mentioned Statute.

The present Protocol, which has been drawn up in accordance with the decision taken by the Assembly of the League of Nations on the 13th December, 1920, is subject to ratification. Each Power shall send its ratification to the Secretary-General of the League of Nations ; the latter shall take the necessary steps to notify such ratification to the other signatory Powers. The ratifications shall be deposited in the archives of the Secretariat of the League of Nations.

The said Protocol shall remain open for signature by the Members of the League of Nations and by the states mentioned in the Annex to the Covenant of the League.

The Statute of the Court shall come into force as provided in the above-mentioned decision.

Executed at Geneva, in a single copy, the French and English texts of which shall both be authentic.

December 16, 1920.

[Signatures.]

#### *Optional Clause*

The undersigned, being duly authorised thereto, further declare, on behalf of their Government, that, from this date, they accept as compulsory, *ipso facto* and without special Convention, the jurisdiction

<sup>1</sup> *Treaty Series*, No. 23 (1923).

of the Court in conformity with Article 36, paragraph 2, of the Statute of the Court, under the following conditions : . . .

§ 658. *Protocol for the Revision of the Statute of the Permanent Court of International Justice. Geneva, September 14, 1929.*<sup>1</sup>

1. The undersigned, duly authorised, agree, on behalf of the Governments which they represent, to make in the Statute of the Permanent Court of International Justice the amendments which are set out in the Annex to the present Protocol and which form the subject of the resolution of the Assembly of the League of Nations of September 14th, 1929.

2. The present Protocol, of which the French and English texts are both authentic, shall be presented for signature to all the signatories of the Protocol of December 16th, 1920, to which the Statute of the Permanent Court of International Justice is annexed, and to the United States of America.

(Arts. 3 to 7, providing for ratification, entry into force, etc.)

Done at Geneva, the 14th day of September, 1929, in a single copy which shall be deposited in the archives of the Secretariat of the League of Nations. The Secretary-General shall deliver authenticated copies to the Members of the League of Nations and to the states mentioned in the Annex to the Covenant.

[Signatures in alphabetical order of countries in French.]

§ 659. *Protocol regarding the Accession of the United States to the Protocol establishing the Permanent Court of International Justice. Geneva, September 14, 1929.*<sup>2</sup>

The states signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice, dated December 16th, 1920, and the United States of America, through the undersigned duly authorised representatives, have mutually agreed upon the following provisions regarding the adherence of the United States of America to the said Protocol subject to the five reservations formulated by the United States in the resolution adopted by the Senate on January 27th, 1926.

(Arts. 1 to 6.)

Art. 7.—The present Protocol shall be ratified. Each state shall forward the instrument of ratification to the Secretary-General of the League of Nations, who shall inform all the other signatory states. The instruments of ratification shall be deposited in the archives of the Secretariat of the League of Nations.

The present Protocol shall come into force as soon as all states which have ratified the Protocol of December 16th, 1920, and also the United States, have deposited their ratifications.

(Art. 8.)

Done at Geneva, the 14th day of September, 1929, in a single copy, of which the French and English texts shall both be authoritative.

[Signatures in alphabetical order of countries in French.]

<sup>1</sup> *Treaty Series*, No. 314 (1930).

<sup>2</sup> *Treaty Series*, No. 13 (1930).

§ 660. It may happen that on the conclusion of a multi-lateral treaty or convention, it is found desirable to supply simultaneously observations, declarations and agreements elucidatory of the text, and that these are recorded in a Final Protocol (*Protocol Final*, *Schluss-Protokoll*, or *Protocole de Clôture*) which becomes part of the compact.

§ 661. *Protocole de Clôture, annexed to the International Industrial Property Convention, signed at Washington, June 2, 1911.*<sup>1</sup>

Au moment de procéder à la signature de l'Acte conclu à la date de ce jour, les Plénipotentiaires soussignés sont convenus de ce qui suit : . . .

Le présent Protocole de clôture, qui sera ratifié en même temps que l'Acte conclu à la date de ce jour, sera considéré comme faisant partie intégrante de cet Acte, et aura même force, valeur et durée.

En foi de quoi, etc.

§ 662. *Protocol of Signature of the International Convention regarding Measurement of Vessels employed in Inland Navigation. Paris, November 27, 1925.*<sup>2</sup>

At the moment of signing the Convention of to-day's date relating to the measurement of vessels employed in inland navigation, the undersigned, duly authorised, have agreed as follows :

(Arts. 1 to 6.)

The present Protocol shall have the same force, effect and duration as the Convention of to-day's date of which it is to be considered as an integral part.

In faith whereof the Plenipotentiaries hereinafter named have signed the present Protocol.

Done at Paris, the 27th day of November, 1925, in a single copy which will remain deposited with the Secretariat of the League of Nations ; certified copies will be transmitted to all the States represented at the Conference.

[Signatures.]

§ 663. *Protocol of Signature of the International Convention relating to Economic Statistics. Geneva, December 14, 1928.*<sup>3</sup>

At the moment of signing the Convention of this day's date, the undersigned Plenipotentiaries declare that they have agreed on the interpretations of the various provisions of the Convention set out hereunder in the first part of this Protocol, and that they accept the reservations made in virtue of the first paragraph of Article 17 of the said Convention which are set out in the second part of this Protocol.

<sup>1</sup> *Br. and For. State Papers*, civ. 116.

<sup>2</sup> *Treaty Series*, No. 26 (1927).

<sup>3</sup> *Treaty Series*, No. 43 (1930).

(Parts 1 and 2.)

In faith whereof the undersigned have affixed their signatures to the present Protocol.

Done at Geneva this 14th day of December, 1928, in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations, and of which authenticated copies shall be delivered to all Members of the League of Nations and non-Member states represented at the Conference.

[Signatures.]

§ 664. Similarly, in the case of a bilateral treaty, protocols are often appended, supplementing, amending or qualifying the treaty.

§ 665. *Additional Protocol to the Treaty between Germany and Austria, respecting Air Navigation. Vienna, May 19, 1925.*<sup>1</sup>

(Translation.)

When signing the treaty concluded this day between the German Reich and the Austrian Republic relating to Air Navigation, the undersigned, being duly authorised by their Governments, have made the following concordant statements :

(Arts. 1 to 3.)

The present Additional Protocol, which is done in duplicate, shall form an integral part of the treaty, and shall enter into force at the same time.

Done at Vienna, May 19, 1925.

[Signatures.]

§ 666. *Protocol amending the Extradition Treaty of November 11, 1924, between Great Britain and Czechoslovakia. London, June 4, 1926.*<sup>2</sup>

It being considered necessary to amend Article 12 of the Extradition Treaty between His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and the President of the Czechoslovak Republic, which was signed at London on November 11, 1924, the undersigned Plenipotentiaries have agreed that that Article shall be amended to read as follows : . . .

The present Protocol shall have the same force and duration as the Extradition Treaty of November 11, 1924, to which it relates. It shall be ratified at the same time as that Treaty, of which it shall be regarded as an integral part.

In witness whereof the respective Plenipotentiaries have signed the present Protocol and have affixed thereto their seals.

Done in duplicate at London, the 4th June, 1926.

[Seals and signatures.]

<sup>1</sup> *Br. and For. State Papers*, cxxii. 87.

<sup>2</sup> *Treaty Series*, No. 31 (1926).

§ 667. *Protocol annexed to the Treaty of Commerce and Navigation between Great Britain and Panamá. Panamá, September 25, 1928.*<sup>1</sup>

At the moment of signing the Treaty of Commerce and Navigation of this day's date the undersigned Plenipotentiaries of His Britannic Majesty and of the Republic of Panamá agree as follows :

The said Treaty of Commerce and Navigation shall not apply to the Canal Zone ; nor shall the most-favoured-nation provisions of the said Treaty be invoked by His Britannic Majesty in respect of stipulations agreed to or which may in the future be agreed to between Panamá and the United States of America for the construction, maintenance, operation, sanitation or protection of the Panamá Canal.

The present Protocol shall be ratified and the ratifications shall be exchanged at Panamá at the time of the ratification of the said Treaty of Commerce and Navigation or as soon as possible thereafter. It shall come into force immediately on ratification.

In witness whereof the respective Plenipotentiaries have signed the present Protocol and have affixed thereto their seals.

Done at Panamá in duplicate, in the English and Spanish languages, the 25th day of September, 1928.

[*Seals and signatures.*]

§ 668. Protocols relating to subsidiary matters are also often attached to treaties. To the Treaty of Peace with Turkey, signed at Lausanne, July 24, 1923, are appended six protocols on various matters, as well as a number of conventions, declarations, etc., concluded at the same time as the main instrument.

§ 669. Compacts between two governments in regard to some particular matter are sometimes styled "protocols," though differing in no other respect from those styled agreements. The form has been used to conclude an armistice (Protocol between the United States and Spain, August 12, 1898 ; between Poland and Lithuania, November 29, 1920) ; to interpret the provisions of a former treaty (Protocol between the Argentine Republic and Brazil, October 22, 1878 ; between the United States and Venezuela, February 27, 1915) ; to provide for the delimitation of a boundary (Protocol between Germany and Belgium—Congo-German East Africa—June 25, 1911) ; to record the work of a Boundary Commission (Protocol of August 5, 1924—Tanganyika-Ruanda Urundi—approved by exchange of notes between Great Britain and Belgium, May 17, 1926) ; to re-establish diplomatic relations (Protocol between the Netherlands and Venezuela, April 19, 1909) ;

<sup>1</sup> *Treaty Series*, No. 12 (1929).

to prolong an alliance (Protocol between Germany and Austria, June 1, 1902) ; to regulate some matter of commerce (Protocol between Germany and Italy, October 12, 1926) ; as well as for a great variety of other matters.

§ 670. *Protocol for Renewal of Diplomatic Relations between Germany and Bolivia. La Paz, July 20, 1921.*<sup>1</sup>

(Translation.)

His Excellency Frederick-Charles von Erckert, Envoy Extraordinary and Minister Plenipotentiary of Germany in Chile, specially authorised for this purpose by his Government, and

His Excellency M. Alberto Gutierrez, Minister of Foreign Affairs of Bolivia, specially authorised for this purpose by his Government,

Having met at the Ministry for Foreign Affairs in the City of La Paz on the 20th July, 1921, declared that the Governments of Bolivia and the German Reich, being desirous of resuming the friendly relations which formerly existed between the two countries, agree to appoint as soon as possible their respective diplomatic and consular representatives.

In faith whereof they sign the present Protocol in duplicate.

[Signatures.]

§ 671. *Protocol prolonging the Defensive Alliance of April 23, 1921, between Czechoslovakia and Roumania. Prague, May 7, 1923.*<sup>2</sup>

Les résultats de la Convention d'alliance défensive du 23 avril 1921, ayant été reconnus comme bienfaisants pour la cause de la paix et son maintien jugé ainsi nécessaire, les plénipotentiaires soussignés, munis des pleins pouvoirs respectifs du Président de la République Tchèqueoslovaque et de Sa Majesté le Roi de Roumanie, trouvés en bonne et due forme, sont convenus de ce qui suit ;

(Provisions prolonging former Conventions.)

Le présent Protocole sera communiqué à la Société des Nations (Pacte de la Société des Nations).

Le présent Protocole sera ratifiée, et les ratifications seront échangées à Prague le plus tôt possible.

En foi de quoi les plénipotentiaires l'ont signé et y ont apposé leurs sceaux.

Fait à Prague, en double expédition, le 7 mai, 1923.

[Seals and signatures.]

#### PROCÈS-VERBAL

§ 672. This term is applied to a formal record of proceedings. During a congress or conference the minutes of meetings of plenipotentiaries are sometimes styled protocol or *procès-verbal*

<sup>1</sup> *Br. and For. State Papers.* cxvi. 776.

<sup>2</sup> *Ibid.*, cxviii. 119.

indifferently ; the latter is the more suitable term for this purpose.

§ 673. When a treaty or convention is signed between a number of states, or when ratifications are deposited, a formal record of the proceedings is often prepared and signed. For such a record as a simple statement of fact, the term *procès-verbal* is appropriate, but if it embodies provisions or conditions which constitute a further agreement between the parties, it becomes a subsidiary compact, and would better be styled protocol. It cannot be said, however, that the distinction is closely observed in practice.

§ 674. *Procès-Verbal recording Amendment made on Exchange of Ratifications of the Commercial Convention of October 23, 1922, between Poland and Yugoslavia. Warsaw, April 5, 1924.*<sup>1</sup>

Les soussignés s'étant réunis au Ministère des Affaires étrangères à Varsovie, pour procéder à l'échange des ratifications de S.E. le Président de la République polonaise et de Sa Majesté le Roi des Serbes, Croates et Slovènes sur la convention commerciale entre la Pologne et le Royaume des Serbes, Croates et Slovènes, signée à Varsovie le 23 octobre, 1922, les instruments ont été produits et ayant été après examen trouvés en bonne et due forme, l'échange en a été opéré.

Les plénipotentiaires soussignés croient nécessaire de constater que, par l'échange de notes entre la Légation de Pologne à Béograd, en date du 27 février, et le Ministère des Affaires étrangères à Béograd, en date du 2 juin, 1923, l'amendement a été apporté au texte de la première partie de l'article 1 de la convention commerciale, en remplaçant le mot "nationaux" dudit article par la formule "ressortissants de la nation la plus favorisée." Ainsi la rédaction définitive de l'article en question est la suivante :

(Text.)

En foi de quoi les soussignés, dûment autorisés à cet effet, ont dressé le présent procès-verbal et y ont apposé leurs cachets.

Fait à Varsovie en double exemplaire, le 5 avril, 1924.

[*Seals and signatures.*]

§ 675. *Procès-Verbal de Signature. Treaty of Friendship between Bulgaria and Turkey. Angora, October 18, 1925.*<sup>2</sup>

Les soussignés délégués plénipotentiaires turc et bulgare se sont réunis ce jourd'hui le 18 octobre 1925, au Ministère des Affaires étrangères à Angora pour procéder à la signature des actes qui ont été négociés entre les deux gouvernements, à savoir : . . .

Reconnaissant l'utilité de mieux préciser le sens de l'article (D) du protocole annexé et ne laisser aucun doute sur la bonne volonté réciproque de leurs gouvernements, ils déclarent, au nom de ceux-ci,

<sup>1</sup> *Br. and For. State Papers*, cxxii. 1044.

<sup>2</sup> *Ibid.*, cxxii. 216.

que la restitution des biens prévue dans les clauses de ce paragraphe sera effectuée sans qu'il soit élevé de part et d'autre aucune objection.

Le présent procès-verbal a été dressé en deux exemplaires.

[Signatures.]

§ 676. *Procès-Verbal. Deposit of Ratifications of the International Convention of April 24, 1926, respecting Motor Traffic. Paris, October 24, 1929.*<sup>1</sup>

Conformément aux dispositions de l'article 11 de la Convention Internationale relative à la circulation automobile, signée à Paris le 24 avril 1926, les soussignés représentants de la Belgique, de la Bulgarie, de l'Espagne, de la Finlande, de la France, de la Grande-Bretagne et de l'Irlande du Nord, de la Grèce, de la Hongrie, de l'Italie, de l'État libre d'Irlande, du Luxembourg, du Maroc, du Monaco, de la Norvège, des Pays-Bas, de la Pologne, du Portugal, de la Roumanie, du Territoire du Bassin de la Sarre, de la Tunisie,—Puissances liées par la Convention Internationale relative à la circulation automobile de 1909 antérieurement à la date du 24 avril 1926,—se sont présentés aujourd'hui au Ministère des Affaires étrangères de la République Française et ont déposé les instruments de ratification de leurs Souverains ou Chefs d'États sur cet acte international.

D'autre part, les soussignés représentants de Cuba, de l'Égypte, de l'Estonie, de la Lettonie, du Siam, de l'Uruguay, de l'Union des Républiques Socialistes Soviétiques et de la Yougo-Slavie ont accompli ce même jour la même formalité.

Ces instruments ayant été, après examen, trouvés en bonne et due forme, ont été confiés au Gouvernement de la République Française pour rester déposés dans ses archives.

En exécution de l'article 15 de la Convention du 24 avril 1926 chacun des représentants des États signataires de la Convention du 11 octobre 1909 déclarent dénoncer cette dernière Convention.

Une expédition authentique du présent procès-verbal sera adressée aux Puissances contractantes.

En foi de quoi, les soussignés ont dressé le présent procès-verbal qu'ils ont revêtu de leurs cachets.

Fait à Paris, le 24 octobre 1929.

[Signatures.]

§ 677. *Procès-Verbal. Deposit of Ratifications of the International Treaty of April 22, 1930, for the Limitation and Reduction of Naval Armament. London, October 27, 1930.*<sup>2</sup>

The undersigned, having met together for the purpose of proceeding to the deposit of ratifications of the Treaty for the Limitation and Reduction of Naval Armament, signed at London, the 22nd day of April, 1930 ;

<sup>1</sup> *Treaty Series*, No. 11 (1930).

<sup>2</sup> *Treaty Series*, No. 1 (1931).

Having produced the instruments whereby the said Treaty has been ratified by the President of the United States of America, by His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, in respect of the United Kingdom of Great Britain and Northern Ireland and all parts of the British Empire which are not separate members of the League of Nations, of the Dominion of Canada, of the Commonwealth of Australia, of the Dominion of New Zealand, of the Union of South Africa, and of India ; and by His Majesty the Emperor of Japan ;

And the respective ratifications of the said Treaty having been carefully compared and found to be in due form, the said deposit in accordance with the provisions of Article 24 (1) of the Treaty took place this day in the customary form.

The representative of the United States of America declared that the instrument of ratification of the United States of America was deposited subject to the distinct and explicit understandings set forth in the resolution of the 21st July, 1930, of the Senate of the United States of America advising and consenting to ratification, that there are no secret files, documents, letters, understandings or agreements which in any way, directly or indirectly, modify, change, add to, or take from any of the stipulations, agreements or statements in said Treaty ; and that, excepting the agreement brought about through the exchange of notes between the Governments of the United States, Great Britain and Japan, having reference to Article 19, there is no agreement, secret or otherwise, expressed or implied, between any of the parties to said Treaty as to any construction that shall hereafter be given to any statement or provision contained therein.

In witness whereof they have signed this *procès-verbal*, and have affixed thereto their seals.

Done at London, the 27th day of October, 1930.

[*Seals and signatures.*]

#### EXCHANGE OF NOTES

§ 678. Agreements on topics of minor importance are frequently concluded by means of formal notes exchanged between the minister for foreign affairs, acting on behalf of his government, and the resident diplomatic agent of the other country, similarly authorised. It is not usual to exhibit full powers for such exchanges of notes.

§ 679. Agreements in this form sometimes result from oral discussion of the subject matter, but are more often the outcome of a correspondence in which the proposal has been put forward and discussed in advance. Usually the notes exchanged recording the agreement bear the same date, in which case, unless they provide otherwise, the agreement has

effect from that date. If they bear different dates, that of the last note, or at any rate the date of its receipt, is the governing date (unless it is otherwise provided), since the agreement cannot be regarded as completed until it is plain that it has been accepted on both sides. Sometimes several notes may pass before a final agreement is reached ; in this case "correspondence" is a more suitable term than exchange of notes.

§ 680. Agreements concluded in the form of an exchange of notes range over a great variety of matters, such as the establishment or prolongation of a commercial *modus vivendi*, renewal of an arbitration or other convention, confirmation of the work of a boundary commission, recognition of tonnage certificates, exemption from double taxation, recognition of trade marks, commercial travellers' samples, to mention but a few.

§ 681. The following examples show in general the form adopted in an exchange of notes constituting a simple agreement :

*Exchange of Notes between Germany and Bolivia regarding Protection of Trade Marks. La Paz, February 20, 1925.*<sup>1</sup>

(Translation.)

(1)

La Paz, February 20, 1925.

YOUR EXCELLENCY,

I have the honour, on behalf of the German Government, to declare to Your Excellency that the following rules shall be valid in future as regards the reciprocal protection of trade marks in the German Reich and in Bolivia.

(Three articles.)

4. The present agreement shall come into force on the expiration of three months from to-day and shall remain in force until the expiration of six months after its denunciation by either of the two states.

I avail myself, etc.

(2)

La Paz, February 20, 1925.

YOUR EXCELLENCY,

In conformity with your note of to-day's date I have the honour to inform you that my Government agrees to apply the following rules in future as regards the reciprocal protection of trade marks in Bolivia and in the German Reich.

(Arts. 1 to 4 as in German note.)

I avail myself, etc.

§ 682. *Notes renewing the Arbitration Convention between Great Britain and the Netherlands of February 15, 1905. London, July 12, 1925.*<sup>2</sup>

<sup>1</sup> *Br. and For. State Papers*, cxxii. 199.

<sup>2</sup> *Treaty Series*, No. 36 (1925).

(1)

Foreign Office,  
London, July 12, 1925.

SIR,

I have the honour to state that His Britannic Majesty's Government are prepared to renew for a further period of five years from the present date the Arbitration Convention signed at London on the 15th February, 1905, and successively renewed by Conventions signed at London on the 16th December, 1909, the 25th March, 1915, and the 1st June, 1920.

2. It is understood, however, that in place of reference to the Permanent Court of Arbitration as provided for in articles 1 and 2 of the aforesaid Convention of the 15th February, 1905, the reference shall in any case arising be made to the Permanent Court of International Justice, in accordance with the procedure laid down in the Statute of that Court and the Rules of Court adopted thereunder.

3. If this proposal is agreeable to the Netherlands Government, the present note and the reply in similar terms will be regarded as giving legal validity to and as placing on record the understanding between the respective Governments in the matter.

I have, etc.

(2)

Légation néerlandaise,  
Londres, le 12 juillet 1925.

M. LE SECRÉTAIRE D'ÉTAT,

En réponse à la note que votre Excellence a bien voulu m'adresser ce jourd'hui, j'ai l'honneur de porter à sa connaissance que le Gouvernement néerlandais est prêt à renouveler une fois de plus, pour une période de cinq ans à partir du 12 juillet 1925, la Convention d'Arbitrage signée à Londres le 15 février 1905, renouvelée successivement par les Conventions signées à Londres le 16 décembre 1909, le 25 mars 1915 et le 1<sup>er</sup> juin 1920.

(Paragraph 2 as in British note.)

3. Il est convenu que la note de votre Excellence et la présente réponse seront considérées comme établissant et constatant l'accord entre les Gouvernements respectifs dans cette matière.

Veuillez agréer, etc.

§ 683. *Notes exchanged between Great Britain and Portugal, confirming the Protocol defining a Section of the Boundary between Angola and Rhodesia. Lisbon, November 3, 1925.*<sup>1</sup>

(1)

His Britannic Majesty's Embassy,  
Lisbon, November 3, 1925.

YOUR EXCELLENCY,

His Britannic Majesty's Government have received the original signed version, in the English and Portuguese texts, of the

<sup>1</sup> *Treaty Series*, No. 55 (1925).

Protocol, with its accompanying map, which was signed at Cape Town on the 5th March, 1915, by the commissioners appointed by our respective Governments to carry out, in accordance with the arbitration award of His Majesty the King of Italy, the delimitation of the frontier between the Portuguese colony of Angola and Rhodesia, from the intersection of the 24th meridian east of Greenwich and the Congo-Zambesi watershed to the intersection of the 22nd meridian east of Greenwich and the "bord oriental du lit des hautes eaux du Kwando (Cuando)."

I have the honour to inform your Excellency that I am authorised by His Britannic Majesty's Government to confirm on their behalf this Protocol, as set forth in the accompanying printed copy and map, duly certified by me, and to state that they would be glad to receive a similar assurance on the part of the Portuguese Government.

It is understood that with a view to exact conformity between the map and article 41 of the Protocol, the boundary pillar marked "M. 1" on the map is to be regarded as marked "L. 25-M. 1" referred to in the said article 41.

The present Note and your Excellency's reply in identic terms will constitute the agreement between the British and Portuguese Governments in the matter.

I avail, etc.

(2)

(Translation.)

Ministry for Foreign Affairs,  
Lisbon, November 3, 1925.

MR. AMBASSADOR,

The Government of the Portuguese Republic have received the original text, in Portuguese and English, of the Protocol with its respective map annexed, which was signed at Cape Town on the 5th March, 1915, by the commissioners appointed by our respective Governments to carry out, in accordance with the arbitration award of His Majesty the King of Italy, the delimitation of the frontier between the Portuguese colony of Angola and Rhodesia, from the point of contact of the 24th meridian east of Greenwich with the line of division of the waters Congo-Zambesi to the point of contact of the 22nd meridian east of Greenwich with "le bord oriental du lit des hautes eaux du Kwando (Cuando)."

(Paragraphs 2 and 3 in terms similar to British note.)

The present note and your Excellency's reply in identic terms will constitute the agreement between the Portuguese and British Governments on the subject.

I avail, etc.

§ 684. *Notes exchanged between Great Britain and Spain for the Reciprocal Recognition of Proof Marks on Fire-arms. Madrid, September 8, 1927.*<sup>1</sup>

<sup>1</sup> *Treaty Series*, No. 27 (1927)

(1)

British Embassy,  
San Sebastian, September 8, 1927.

YOUR EXCELLENCY,

I have the honour to state, on behalf of His Britannic Majesty's Government in Great Britain, that they agree to the following provisions, as constituting an Agreement on a reciprocal basis between them and the Spanish Government :

(Three articles.)

4. Subject to the right of termination above mentioned, this Agreement shall remain in force for a period of three years. If neither of the Governments shall have notified the other not less than six months before the expiration of the said period of three years of its intention to terminate the Agreement, this Agreement shall continue in force for a further period of three years, and so forth for further periods of three years in the same manner.

5. His Britannic Majesty's Government in Great Britain and the Spanish Government reserve the right to add, by mutual consent, such modifications to this Agreement as experience may show to be useful.

The present note and your Excellency's reply of the same date in a similar sense shall be regarded as placing on record the understanding arrived at between the two Governments.

I avail, etc.

(2)

(Translation.)

Ministry of State,  
Madrid, September 8, 1927.

YOUR EXCELLENCY,

I have the honour to inform your Excellency that, as a result of the communications exchanged between your Excellency and this Ministry of State, and in the last instance your note of this date, His Catholic Majesty's Government agree to the following provisions, as constituting an Agreement with His Britannic Majesty's Government for the reciprocal recognition of proof marks on fire-arms :

(Five articles as in British note.)

The present note and your Excellency's note of the same date in a similar sense shall be regarded as concluding the present Agreement between the two Governments.

I avail, etc.

§ 685. *Notes exchanged between the Union of South Africa and Portugal confirming the Report of the Boundary Commission appointed to define a Portion of the Boundary between the Union and Mozambique. Lisbon, October 6, 1927.*<sup>1</sup>

<sup>1</sup> *Treaty Series*, No. 8 (1928).

(1)

His Britannic Majesty's Embassy,  
Lisbon, October 6, 1927.

YOUR EXCELLENCY,

His Britannic Majesty's Government in the Union of South Africa have received the original signed versions in the English and Portuguese texts of the report, with its accompanying annex and maps, which was signed on the 18th February, 1926, by the Commissioners appointed to define by beacons that portion of the boundary line between the territories of the Union of South Africa and of the Province of Mozambique which lies between a point a few kilometres north of the Singwetsi River and the junction of the Limpopo and Pafuri Rivers.

I have the honour to inform your Excellency that I am now authorised to confirm, on behalf of His Britannic Majesty's Government in the Union of South Africa, the aforesaid report as set forth in the accompanying printed copies and maps duly certified by me and to state that they will be glad to receive a similar assurance on the part of the Portuguese Government.

In order to remedy certain minor defects in the signed report of the 18th February, 1926, it is understood that

(List of corrections.)

The present Note and your Excellency's reply in a similar sense will be regarded as giving validity to, and as placing on record, the understanding between the respective Governments in the matter.

I avail, etc.

(2)

(Translation.)

Ministry for Foreign Affairs,  
Lisbon, October 6, 1927.

M. LE CHARGÉ D'AFFAIRES,

The Government of the Portuguese Republic has received the original text, in Portuguese and English, of the report, with its accompanying annex and maps, which were signed on the 18th February, 1926, by the Commissioners appointed to define by beacons that portion of the boundary line between the territories of the Union of South Africa and the Province of Mozambique which lies between a point a few kilometres north of the Singwetsi River and the junction of the Limpopo and Pafuri Rivers.

(Continuing in similar terms to the above note.)

The present Note and your Excellency's reply in identical terms will validate and constitute the agreement between the two respective Governments in the matter.

I avail, etc.

§ 686. *Notes extending the Extradition Treaty between Great Britain and Belgium to Mandated Territories.* London, June 28/July 2, 1928.<sup>1</sup>

<sup>1</sup> *Treaty Series*, No. 20 (1928).

(1)

Foreign Office,  
June 28, 1928.

YOUR EXCELLENCY,

By the Convention signed at London on the 8th August, 1923, the provisions of the Extradition Treaty between Great Britain and Belgium of the 29th October, 1901, and the Conventions supplementary thereto of the 5th March, 1907, and the 3rd March, 1911, were extended to the Belgian Congo and certain named British protectorates. It was further provided that if, after the signature of that Convention, it was considered advisable to extend its provisions to British protectorates other than those mentioned, or to territories in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty, then, after agreement arrived at between the respective Governments, its provisions should apply also to these other protectorates, or to such territories, from the date prescribed in the notes to be exchanged for the purpose of effecting such extension.

2. It is the desire of His Majesty's Government in Great Britain that the provisions of the Convention of the 8th August, 1923, should now be extended to Palestine (excluding Transjordan), Tanganyika Territory, the British Cameroons, and the British sphere of Togoland, in respect of which mandates on behalf of the League of Nations have been accepted by His Britannic Majesty, and to Nauru. His Majesty's Governments in the Commonwealth of Australia, in New Zealand, and in the Union of South Africa, respectively, desire that the provisions of the said Convention should similarly be extended to the mandated territories of New Guinea, to Western Samoa, and to South-West Africa. It is accordingly agreed by the present exchange of notes that the provisions of the said Convention shall apply to the above-mentioned territories as from the 1st August, 1928.

3. It is further agreed by the present exchange of notes that as from the 1st August, 1928, the provisions of the Extradition Treaty of the 29th October, 1901, and the Conventions supplementary thereto of the 5th March, 1907, and the 3rd March, 1911, shall apply to the territories of Ruanda-Urundi, in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty the King of the Belgians, subject to the same conditions as those set forth in Articles 2 and 3 of the aforesaid Convention of the 8th August, 1923.

I have, etc.

(2)

Ambassade de Belgique, Londres,  
le 2 juillet 1928.

M. LE SECRÉTAIRE D'ÉTAT,

Par la Convention signée à Londres, le 8 août 1923, les dispositions du Traité d'Extradition du 29 octobre 1901 entre la Belgique et la Grande-Bretagne, ainsi que les Conventions additionnelles

audit Traité, des 5 mars 1907 et 3 mars 1911, ont été étendues au Congo belge et à certains protectorats britanniques désignés nominativement. Il avait, de plus, été entendu que si, après la signature de cette Convention, il était considéré comme désirable d'étendre ses dispositions à des protectorats britanniques autres que ceux qui sont mentionnés, ou à des territoires au sujet desquels un mandat de la part de la Société des Nations a été accepté par Sa Majesté britannique, ses dispositions, après accord entre les Gouvernements respectifs, s'appliqueraient aussi à ces autres protectorats ou à ces territoires, à partir de la date fixée dans les notes devant être échangées en vue de réaliser pareille extension.

(Continuing as in paragraphs 2 and 3 of the above note.)

Je saisis, etc.

§ 687. *Notes exchanged between Great Britain and the Soviet Union on the Occasion of the Resumption of Diplomatic Relations. London, December 20, 1929.*<sup>1</sup>

(1)

Embassy of the Union of Soviet Socialist  
Republics, London, December 20, 1929.

SIR,

By clause 7 of the protocol signed on the 3rd October last by the Soviet Ambassador in Paris on behalf of the Government of the Union of Soviet Socialist Republics and His Majesty's Principal Secretary of State for Foreign Affairs on behalf of His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland, both Governments engaged themselves to confirm the pledge with regard to propaganda contained in Article 16 of the General Treaty signed on the 8th August, 1924, between the Union of Soviet Socialist Republics and Great Britain and Northern Ireland.

The terms of that article were as follows :

"The contracting parties solemnly affirm their desire and intention to live in peace and amity with each other, scrupulously to respect the undoubted right of a State to order its own life within its own jurisdiction in its own way, to refrain and to restrain all persons and organisations under their direct or indirect control, including organisations in receipt of financial assistance from them, from any act overt or covert liable in any way whatsoever to endanger the tranquillity or prosperity of any part of the territory of the British Empire or the Union of Soviet Socialist Republics, or intended to embitter the relations of the British Empire or the Union with their neighbours or any other countries."

It was further agreed that effect should be given to this clause

<sup>1</sup> *Treaty Series*, No. 2 (1930).

of the aforesaid protocol not later than the day on which the respective ambassadors presented their credentials.

Having this day presented to His Royal Highness the Prince of Wales the letters accrediting me as Ambassador of the Union of Soviet Socialist Republics to His Majesty the King, I have the honour, by the direction of the People's Commissary for Foreign Affairs and on behalf of the Government of the Union of Soviet Socialist Republics, to confirm the undertaking contained in the article quoted above, and to inform you that the Government of the Union of Soviet Socialist Republics regard that undertaking as having full force and effect as between themselves and His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland and the Government of India.

I am instructed to add that the Government of the Union of Soviet Socialist Republics will be happy to receive, in accordance with clause 7 of the protocol of the 3rd October, a corresponding declaration from His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland and the Government of India.

I have, etc.

(2)

Foreign Office,  
London, December 20, 1929.

YOUR EXCELLENCY,

I have the honour to acknowledge the receipt of the note, dated to-day, in which your Excellency confirms, on behalf of the Government of the Union of Soviet Socialist Republics, the pledge regarding propaganda contained in Article 16 of the General Treaty signed on the 8th August, 1924, between Great Britain and Northern Ireland and the Union of Soviet Socialist Republics.

2. In taking due note of this declaration, I have the honour to inform your Excellency that, in accordance with the understanding between His Majesty's Government in the United Kingdom and the Government of the Union of Soviet Socialist Republics, as recorded in the protocol of the 3rd October, 1929, His Majesty's Ambassador in Moscow has been instructed to inform the Government of the Union of Soviet Socialist Republics that His Majesty's Government in the United Kingdom and the Government of India, for their part, also regard the undertaking contained in Article 16 of the treaty signed on the 8th August, 1924, as having full force and effect as between themselves and the Government of the Union of Soviet Socialist Republics.

I have, etc.

§ 688. *Notes exchanged between Great Britain and Liberia regarding the Boundary between Sierra Leone and Liberia. Monrovia, January 16/17, 1930.*<sup>1</sup>

<sup>1</sup> *Treaty Series*, No. 17 (1930).

(1)

British Legation, Monrovia,  
January 16, 1930.

YOUR EXCELLENCY,

I have the honour to refer to your note of the 16th December last informing me that the Government of Liberia are prepared to agree to the following proposals of His Majesty's Government for adjusting the situation on the Sierra Leone-Liberian boundary between the Mauwa and Moro rivers :

1. His Majesty's Government undertake to withdraw from the area in Liberian territory which has been incorrectly regarded as forming part of the Sierra Leone Protectorate.
2. In order to prevent the recurrence of any such mistake, His Majesty's Government will arrange as soon as possible for a redemarcation of the boundary between the Mauwa and Moro rivers, and will bear the whole cost of this work, including the expenses of a representative of the Liberian Government.
3. The inhabitants of the area in question shall be given the option of moving into Sierra Leone territory not later than the 30th June, 1930, taking with them their portable property and harvested crops.

I have the honour to inform your Excellency that I have now been authorised by His Majesty's Government to confirm on their behalf this agreement, and to state that they would be glad to receive a similar confirmation on the part of the Government of Liberia.

The present note on behalf of His Majesty's Government and your Excellency's reply in similar terms on behalf of the Government of Liberia will accordingly be regarded as placing on record the agreement arrived at between our respective Governments in the matter.

I avail, etc.

(2)

Department of State, Monrovia, Liberia,  
January 17, 1930.

MR. CHARGÉ D'AFFAIRES,

I have the honour to acknowledge your note of the 16th instant informing me that His Majesty's Government are prepared to agree to the following proposals for adjusting the situation on the Sierra Leone-Liberian boundary between the Mauwa and Moro rivers :

(As set forth above.)

I have the honour to inform you that I am authorised to confirm on behalf of the Government of Liberia this agreement, and to say that they regard the present note and the Legation's note of the 16th January, 1930, as placing on record the agreement arrived at between our respective Governments in this matter.

With sentiments of high consideration,

I have, etc.

§ 689. Exchanges of notes often accompany the conclusion of a treaty or convention, in explanation of some provision of the latter, or as constituting a subsidiary agreement on some relevant point. The Treaty of Commerce and Navigation between Great Britain and Turkey,<sup>1</sup> *e.g.*, has appended to it six such exchanges of notes, relating respectively to Article 16 (2), Article 24, and Article 37 of the Treaty, the extension of its provisions to British colonies, etc., the position of British schools and hospitals in Turkey, and the position in Turkish ports of shipping agents, etc.

§ 690. *Notes appended to the Agreement between Great Britain and Portugal for the Mutual Recognition of Load-Line Certificates. London, January 27, 1928.*<sup>2</sup>

(1)

Foreign Office, London,  
January 27, 1928.

YOUR EXCELLENCY,

With reference to the agreement signed this day between His Majesty's Government in Great Britain and the Government of the Portuguese Republic for the mutual recognition of load-line certificates, I have the honour to state that this agreement shall be considered as applying also to ports in the British Colonies, on the understanding that the Portuguese Government recognise as equally valid for the purposes of the agreement certificates issued to British ships in certain British Colonies which, by virtue of an Order-in-Council under section 444 of the Merchant Shipping Act, 1894, have been declared to have the same effect as if they had been issued under Part V of that Act.

2. On their side, His Majesty's Government in Great Britain, taking into consideration the fact that legislation in the Portuguese Colonies is identical to that which is in force on the continent of the Portuguese Republic, recognise as equally valid for the purpose of the agreement load-line certificates issued in the Portuguese Colonies in accordance with the laws and regulations in force in Portugal and her Colonies.

3. The present note and your Excellency's reply will accordingly be regarded as placing this understanding on record.

I have, etc.

(2)

(*Translation.*)

Portuguese Embassy, London,  
January 27, 1928.

YOUR EXCELLENCY,

In reply to the note which your Excellency addressed to me to-day with regard to the application to ports in the Portuguese Colonies and to ports in British Colonies of the agreement signed

<sup>1</sup> § 595.

<sup>2</sup> *Treaty Series*, No. 4 (1928).

this day between the Government of the Portuguese Republic and His Majesty's Government in Great Britain for the mutual recognition of load-line certificates, I have the honour to state that (following in substance the terms of the above note).

2. The present note and your Excellency's note, to which I have the honour to reply, will accordingly be regarded as placing this understanding on record.

I have, etc.

§ 691. *Notes appended to Treaty of Commerce between Great Britain and Panamá. Panamá, September 25, 1928.*<sup>1</sup>

(1)

(*Translation.*)

Ministry of Foreign Relations,  
Panamá, September 25, 1928.

SEÑOR MINISTRO,

Referring to Articles 2, 3 and 4 of the Treaty of Commerce and Navigation signed to-day by us, permit me to confirm to your Excellency the understanding which we arrived at during the negotiations, namely, that the stipulations of those articles do not in any way affect the laws and regulations of the contracting parties relative to immigration.

I avail, etc.

(2)

British Legation, Panamá,  
September 25, 1928.

M. LE MINISTRE,

I have the honour to acknowledge the receipt of your Excellency's note of the 25th instant, in which you refer to Articles 2, 3 and 4 of the Treaty of Commerce and Navigation signed by us to-day, and confirm the understanding which we arrived at during the negotiations, namely, that the stipulations of those articles do not affect, in any way, the laws and regulations of the contracting parties relative to immigration.

I avail, etc.

<sup>1</sup> *Treaty Series*, No. 12 (1929).

## CHAPTER XXVI

### TREATIES AND OTHER INTERNATIONAL COMPACTS (continued)

#### MODUS VIVENDI, COMPROMIS D'ARBITRAGE, RÉVERSALES

##### MODUS VIVENDI

§ 692. THIS is the title given to a temporary and provisional agreement, usually intended to be replaced later on, whenever it may prove feasible, by one of a more permanent and detailed character ; or, it may be, pending a reference to arbitration. It is not, however, always so designated in the document by which it is established. This sometimes consists of an agreement, signed by both parties, or even of a convention, but more often of an exchange of notes.

§ 693. *Provisional Agreement between Great Britain and the Netherlands relating to Air Navigation. The Hague, July 11, 1923.*<sup>1</sup>

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and Her Majesty the Queen of the Netherlands, being desirous of entering into a provisional agreement relating to air navigation between Great Britain and Northern Ireland and the Netherlands, have appointed as their plenipotentiaries for this purpose : [names]

who, after having communicated to each other their full powers, found to be in good and proper form, have agreed as follows :

(Arts. 1 to 15.)

16. The present agreement shall be ratified and the ratifications shall be exchanged as soon as possible. It will come into force on the date of exchange of the ratifications.

17. The present agreement, which is of a provisional character, may be denounced by either of the contracting parties at any time by giving notice three months in advance.

Furthermore, each of the contracting parties reserves to itself the right to denounce the present agreement, such denunciation to

<sup>1</sup> *Br. and For. State Papers*, cxix. 450.

take immediate effect, after the two contracting parties have ratified the International Air Convention signed at Paris the 13th October, 1919.

In witness whereof the respective Plenipotentiaries have signed the present agreement, and have affixed thereto their seals.

Done at The Hague in duplicate in the English and Dutch languages, the 11th July, 1923.

[Seals and signatures.]

§ 694. *Notes exchanged between Great Britain and Spain respecting the Duration of the Commercial Treaty of 1922. Madrid, October 22, 1926.*<sup>1</sup>

(1)

British Embassy, Madrid,  
October 22, 1926.

YOUR EXCELLENCY,

I have the honour, under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, to inform your Excellency that, in order to avoid the situation which might arise if the forthcoming negotiations for the revision of the Anglo-Spanish Commercial Treaty were unduly prolonged or led to no agreement, His Britannic Majesty's Government are agreed that, in spite of the provisions of Article 25 of the said Treaty, it shall be open to either the British Government or the Spanish Government to give notice at any time from the 23rd October onwards of the abrogation of the Treaty as from the 23rd April, 1927.

I have, etc.

(2)

(Translation.)

Ministry for Foreign Affairs, Madrid,  
October 22, 1926.

YOUR EXCELLENCY,

I have the honour to inform your Excellency that, in order to avoid the situation which might arise if the course of the negotiations for the revision of the Anglo-Spanish Treaty of Commerce were unduly prolonged or if they led to no agreement, His Catholic Majesty's Government are agreed that, in spite of the dispositions of Article 25 of the said Treaty, both the Spanish Government and the English Government are at liberty to notify at any time from the 23rd October onwards the abrogation of the Treaty as from the 23rd April, 1927.

I avail, etc.

§ 695. *Notes exchanged between Great Britain and Hayti for the Establishment of a Commercial Modus Vivendi. Port-au-Prince, February 25, 1928.*<sup>2</sup>

<sup>1</sup> *Treaty Series*, No. 27 (1926).

<sup>2</sup> *Treaty Series*, No. 17 (1928).

(1)

British Legation, Port-au-Prince,  
February 25, 1928.

MONSIEUR LE MINISTRE,

It being the desire of His Britannic Majesty's Government in Great Britain and the Government of the Republic of Hayti to establish close commercial relations between Great Britain and Northern Ireland and Hayti, I have the honour to refer to the proposals which I submitted to your Department by my letter of the 27th December last to place on record the mutual understanding between the two Governments which has been arrived at and is to the effect that in respect of import and export duties and other duties and charges affecting commerce, as well as in respect of transit, warehousing and other facilities, and the treatment of commercial travellers' samples, Great Britain and Northern Ireland will accord to Hayti, and Hayti will accord to Great Britain and Northern Ireland, unconditional most-favoured-nation treatment, and that in matters of licensing or prohibitions of import and export each country, so far as it at any time maintains such a system, will accord to the commerce of the other treatment as favourable with respect to commodities, valuations and quantities as that which may be accorded to the commerce of any other foreign country.

In particular it is understood that—

(Detailed provisions.)

The present arrangement shall become operative on March 1st, 1928, and, unless sooner terminated by mutual agreement, shall continue in force for one year and thereafter until six months after notice of its termination shall have been given by either party.

I have, etc.

(2)

Secrétairerie d'État des Relations  
Extérieures, Port-au-Prince,  
le 25 février 1928.

MONSIEUR LE CHARGÉ D'AFFAIRES,

J'ai l'honneur de vous informer que le Gouvernement haïtien accepte les conditions d'un *modus vivendi* commercial entre la République d'Haïti et la Grande-Bretagne et l'Irlande du Nord, telles que ces conditions sont stipulées dans vos lettres des 27 décembre 1927 et 25 février de cette année.

Je vous confirme, en conséquence, l'entente intervenue entre nous, d'après laquelle (as in above note)

Veillez agréer, etc.

§ 696. *Temporary Commercial Agreement between Great Britain and the Union of Soviet Socialist Republics. London, April 16, 1930.*<sup>1</sup>

His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland and the Government of the Union

<sup>1</sup> *Treaty Series*, No. 19 (1930).

of Soviet Socialist Republics, being mutually desirous to conclude as soon as possible a formal Treaty of Commerce and Navigation between the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics, have meanwhile agreed upon the following temporary Agreement to serve as a *modus vivendi* pending the conclusion of such a Treaty.

(Arts. 1 to 6 respecting most-favoured-nation treatment, functions of Soviet Trade delegation, shipping, extension to British Dominions, colonies, etc.)

Art. 7.—The present Agreement comes into force on this day and shall remain in force until the coming into force of a commercial treaty between the United Kingdom and the Union of Soviet Socialist Republics, subject, however, to the right of either Party at any time to give notice to the other to terminate the Agreement, which shall then remain in force until the expiration of six months from the date on which such notice is given.

So far as concerns any of His Majesty's self-governing Dominions, India or any colony, possession, protectorate or mandated territory in respect of which notes have been exchanged in virtue of Article 4 above or in respect of which notice of the application of this Agreement has been given in virtue of Article 5 above, the Agreement may be terminated separately by either Party at the end of the sixth month or at any time subsequently on six months' notice to that effect being given either by or to His Majesty's Ambassador at Moscow or, in his absence, by or to His Majesty's Chargé d'Affaires.

In witness whereof the undersigned, duly authorised for that purpose, have signed the present Agreement, and have affixed thereto their seals.

Done in duplicate at London in the English language the 16th day of April, 1930.

A translation shall be made into the Russian language as soon as possible and agreed upon between the Contracting Parties.

Both texts shall then be considered authentic for all purposes.

[Seals and signatures.]

§ 697. *Exchange of Notes between Great Britain and Egypt temporarily regulating Commercial Relations. Cairo, June 5/7, 1930.*<sup>1</sup>

(1)

The Residency,  
Cairo, June 5, 1930.

YOUR EXCELLENCY,

With reference to the discussions which have taken place with regard to the conclusion of a Provisional Commercial Agreement to regulate the commercial relations between the United Kingdom of Great Britain and Northern Ireland, and Egypt, I have the honour to inform you that His Majesty's Government in the United

<sup>1</sup> *Treaty Series*, No. 31 (1930).

Kingdom are prepared to enter into an Agreement to the following effect :

(Provisions.)

2. The present Note and a Note from Your Excellency confirming the acceptance by the Egyptian Government of an agreement to this effect shall constitute an Agreement between the two Governments which shall come into force immediately on receipt of Your Excellency's Note and shall remain in force until the 16th February, 1931, unless previously replaced by a Treaty regulating definitely the commercial relations between the United Kingdom and Egypt.

I avail, etc.

(2)

Ministère des Affaires Étrangères,  
Le Caire, le 7 juin 1930.

MONSIEUR LE HAUT-COMMISSAIRE,

J'ai l'honneur d'accuser réception de la lettre de Votre Excellence du 5 juin 1930, ainsi conçue :

[Above note quoted in extenso.]

En réponse, je m'empresse de confirmer à Votre Excellence l'accord de mon Gouvernement sur les bases ci-dessus et je saisis, etc.

Le Ministre des Affaires Étrangères,  
[Signature.]

## COMPROMIS D'ARBITRAGE

§ 698. This term, which denotes an agreement to refer to arbitration some matter or matters in dispute, is applied to a form of compact adopted for the purpose, prescribing, so far as necessary, the course of procedure to be followed.

§ 699. Since the conclusion of the Hague Conventions of 1899 and 1907 for the Pacific Settlement of International Disputes, a considerable number of such agreements have been entered into, variously styled "Compromis," "Agreement," "Special Agreement," etc.

§ 700. Under the Statute of the Permanent Court of International Justice, adjoined to the Protocol of December 16, 1920, establishing that Court, the procedure to be followed in cases brought before the Court is set out in Chapter III of the Statute. Since that Court was established a great number of compacts, in the form of treaties or conventions of conciliation and arbitration, have been concluded between various states. The treaty between Belgium and Finland, *e.g.*, mentioned in § 592, prescribes that disputes of every kind, which it may not have been found possible to settle amicably by diplomacy, may, by agreement between the parties, be submitted to a Permanent

Conciliation Commission, the constitution of which is set out, as well as the procedure to be followed before it ; failing settlement in this way, the dispute is then to be submitted, by means of a special agreement, to the Permanent Court of International Justice, under the conditions, and according to the procedure laid down by its statute ; and in the event of the parties being unable to agree on the terms of this special agreement, either of them may, after a month's notice, bring the dispute direct before the Permanent Court.

Several recent instances of special agreements for the settlement by arbitration of particular matters in dispute are appended.

§ 701. *Special Agreement between the United States and Norway for the submission to Arbitration of Certain Claims of Norwegian Subjects. Washington, June 30, 1921.*<sup>1</sup>

The United States of America and His Majesty the King of Norway, desiring to settle amicably certain claims of Norwegian subjects against the United States, arising, according to contentions of the Government of Norway, out of certain requisitions by the United States Shipping Board Emergency Fleet Corporation ;

Considering that these claims have been presented to the United States Shipping Board Emergency Fleet Corporation, and that the said Corporation and the claimants have failed to reach an agreement for the settlement thereof ;

Considering therefore that the claims should be submitted to arbitration conformably to the Convention of the 18th October, 1907, for the Pacific Settlement of International Disputes and the Arbitration Convention concluded by the two Governments, April 4, 1908, and renewed by Agreements dated the 16th June, 1913, and the 30th March, 1918, respectively.

Have appointed as their plenipotentiaries, for the purpose of concluding the following Special Agreement : [names]

Who, after having communicated to each other their respective full powers, found to be in good and due form, have agreed on the following articles :

(Arts. 1 to 5 respecting the composition of the tribunal ; presentation of cases and counter-cases ; oral proceedings ; language ; time and form of decision ; expenses, etc.)

Art. 6.—This Special Agreement shall be ratified in accordance with the constitutional forms of the Contracting Parties, and shall take effect immediately upon the exchange of ratifications, which shall take place as soon as possible at Washington.

In witness whereof the respective plenipotentiaries have signed this Special Agreement and have hereunto affixed their seals.

Done in duplicate at Washington, this 30th day of June, 1921.

[Seals and signatures.]

<sup>1</sup> *Br. and For. State Papers*, cxiv. 895.

§ 702. *Compromis between France and Switzerland for the submission to Arbitration of the Question of the Status of the Free Zones of Upper Savoy and Gex. Paris, October 30, 1924.*<sup>1</sup>

Le Président de la République française et le Conseil fédéral suisse,

Considérant que la France et la Suisse n'ont pas pu s'entendre au sujet de l'interprétation à donner à l'article 435, alinéa 2, du Traité de Versailles, avec ses annexes, et que l'accord prévu par ces textes n'a pas pu être réalisé par voie de négociations directes,

Ont résolu de recourir à l'arbitrage pour fixer cette interprétation et régler l'ensemble des questions qu'implique l'exécution de l'alinéa 2 de l'article 435 du Traité de Versailles ;

Et, désireux de conclure un compromis témoignant de l'égale volonté de la France et de la Suisse de se conformer loyalement à leurs engagements internationaux,

Ont nommé pour leurs plénipotentiaires, savoir : [names]

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes :

(Arts. 1 to 4 providing for submission of question to the Permanent Court of International Justice, periods for presentation of cases, counter-cases, etc.)

5. Le présent compromis sera ratifié et les ratifications en seront échangées à Paris aussitôt que faire se pourra.

Fait à Paris, en double exemplaire, le 30 octobre, 1924.

[Seals and signatures.]

§ 703. *Compromis d'Arbitrage between France and Turkey regarding the Case of the s.s. "Lotus." Geneva, October 12, 1926.*

Le Gouvernement de la République française et le Gouvernement de la République Turque s'étant mis d'accord pour soumettre à la Cour permanente de Justice internationale la question de compétence judiciaire qui s'est élevée entre les deux gouvernements à la suite de la collision survenue le 2 août, 1926, entre les vapeurs "Bozcourt" et "Lotus,"

Les soussignés, dûment autorisés, sont convenus du compromis ci-après ;

Art. 1.—La Cour permanente de Justice internationale sera priée de statuer sur les questions suivantes :

(Questions ; notification to Court ; periods for deposit of cases and counter-cases ; proceedings and judgment to be in French.)

Art. 5.—Le présent compromis sera ratifié ; les ratifications seront échangées à Paris dans le plus court délai possible. Il entrera en vigueur dès l'échange des ratifications.

Art. 6.—Pour tout ce qui n'est pas prévu par le présent

<sup>1</sup> *Br. and For. State Papers*, cxxii. 620.

compromis, les dispositions du Statut de la Cour permanente de Justice internationale seront appliquées.

Fait en double à Genève, le 12 octobre 1926.

[Signatures.]

§ 704. *Agreement between Germany, Great Britain, Denmark, France, Sweden, Czechoslovakia, and Poland to submit the question of the Territorial Limits of the Jurisdiction of the International Commission of the Oder to the Decision of the Permanent Court of International Justice. London, October 30, 1928.*<sup>1</sup>

Les Gouvernements de l'Allemagne, du Danemark, de la France, de Sa Majesté Britannique en Grande-Bretagne, de la Suède et de la Tchécoslovaquie, d'une part, et le Gouvernement de la Pologne d'autre part, n'étant pas d'accord sur la détermination, dans l'Acte de navigation de l'Oder, des limites territoriales de la juridiction de la Commission internationale de l'Oder, ont convenu de soumettre cette question à la décision de la Cour permanente de Justice internationale, et, à cet effet, ont désigné pour leurs plénipotentiaires : [names]

Qui ont arrêté les dispositions suivantes :

Art. 1.—La Cour permanente de Justice internationale est priée de statuer sur les questions suivantes :

La juridiction de la Commission internationale de l'Oder, s'étend-elle, aux termes des stipulations du Traité de Versailles, aux sections des affluents de l'Oder, la Warthe (Warta) et la Netze (Note<sup>2</sup>) situées sur le territoire polonais, et, dans l'affirmative, sur quels éléments de droit doit-on se baser pour fixer les points amont jusqu'où s'étend cette juridiction ?

Art. 2.—Les Parties sont d'accord pour prier la Cour de vouloir bien, s'il lui est possible, statuer sur cette affaire dans sa session ordinaire de 1928.

Art. 3.—Le présent compromis sera notifié à la Cour par l'une ou l'autre des Parties.

En foi de quoi les soussignés ont signé le présent compromis, et y ont apposé leurs sceaux.

Fait à Londres, le 30 octobre, 1928.

[Seals and signatures.]

§ 705. *Agreement between Great Britain and Portugal for Arbitration of Major Campbell's Claim for Damages suffered in Mozambique. Lisbon, August 1, 1930.*<sup>2</sup>

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Portuguese Republic declare as follows :

(1) Whereas there has arisen between them a difference with regard to the question of an indemnity which the Government of

<sup>1</sup> *Treaty Series*, No. 1 (1929).

<sup>2</sup> *Treaty Series*, No. 36 (1930).

the Portuguese Republic agreed to grant to Major Campbell, a British subject, and

(2) Whereas the Portuguese Government on the one hand contend that they have already completely fulfilled the terms of their agreement and that no further indemnity is due thereunder to Major Campbell, and

(3) Whereas the Government of the United Kingdom of Great Britain and Northern Ireland on the other hand contend that an indemnity is still due to Major Campbell, and

(4) Whereas the two Governments are actuated by a lively desire to reach, within that spirit of cordial friendship which has always inspired their relations, a speedy settlement of the question in accordance with the principles of justice and equity, and

(5) Whereas the two Governments are agreed that this end can best be attained by the submission of the case to a single arbitrator, whose decision each of them undertakes to accept as final and to carry out without delay, and

(6) Whereas the two Governments are agreed in choosing Count Carton de Wiart, Ministre d'État, as arbitrator, and

(7) Whereas Count Carton de Wiart has intimated that he is willing to accept the office of arbitrator,

They have, therefore, decided to conclude an agreement defining the questions to be submitted to the arbitrator and regulating the procedure to be followed in the arbitration and have appointed for that purpose the following : [*names*]

Who, duly authorised by their respective Governments, have agreed as follows :

(Arts. 1 to 14—questions for decision ; language to be French ; appointment of agents ; presentation of memorials, counter-memorial and replies ; oral arguments ; award ; time limits ; expenses.)

Done at Lisbon, in the English and Portuguese languages, this 1st day of August, 1930.

[*Seals and signatures.*]

# RÉVERSALES

§ 706. *Lettres réversales*, according to Pradier-Fodéré, constitute a declaration that an alteration in ceremonial practice is effected without prejudice to the general rule.<sup>1</sup> Calvo defined them as “ Déclaration par laquelle un État s'engage à ne pas contrevenir à des arrangements convenus antérieurement, ou à un usage établi ; ou acte par lequel un État fait une concession en retour d'une autre ; ordinairement par les lettres réversales une cour reconnaît qu'une concession spéciale qui lui est faite par une autre cour ne devra préjudicier en rien aux droits et prérogatives antérieurs de chacune d'elles.”<sup>2</sup>

<sup>1</sup> *Cours de Droit diplomatique*, i. 51 n.

<sup>2</sup> *Dictionnaire du Droit International*, s.v.

§ 707. Ducange is the original authority for the definition of these terms, which might nowadays be explained as a declaration that an error of etiquette or draughtsmanship shall not serve as a precedent, or that a concession is made either in return for another or beyond the established usage.

§ 708. In 1700, when the Elector of Brandenburg was contemplating the assumption of the title of "King" in Prussia, he entered into a secret negotiation with the Republic of Poland with a view to obtaining their consent. It was given, on his undertaking that the new title should not prejudice the rights of the Republic, in this form :

Fredericus Tertius, Dei Gratia, etc. Omnibus quorum interest notum facimus, cum Titulum & Dignitatem Regalem, quibus ante plura sæcula fulgebat Ducalis nostra Prussia, reassumendum meritò censeamus, nihil ex hac Majestatica prærogativa Prussiæ Nostræ quæ nunc Ducalis appellatur, præjudicii inferendum nec inferri posse juri ac possessioni Regalis Prussiæ, quâ Serenissimus Rex & Respublica Poloniæ gaudent, neque ullam in eamdem Prussiam Regalem prætentionem à nobis ac Successoribus Nostris inde vindicandam; Pacta quoque Bydgostiensia<sup>1</sup> perpetui Fœderis Serenissimam Regiam Majestatem, inclitamque Rempublicam & nos inter, præcipue vero Art. VI. quo cautum est ut deficientibus masculis ex lineâ legitima Divi quondam Parentis Nostri Descendentibus Serenissimis Regibus & Reipublicæ Poloniæ jus suum integrum in altè memoratam Prussiam Ducalem reservetur, planè & sacrosanctè servanda, neque ullatenùs vel in toto vel in parte à Nobis ac Successoribus Nostris infringenda ac violanda, in quorum fidem Dat. Coloniz ad Spream<sup>2</sup> de 8 Junii 1700.<sup>3</sup>

East Prussia, hitherto a dukedom, and until the Treaty of Wehlau, September 19, 1657, a fief of Poland, was a possession of the Elector of Brandenburg, while West Prussia was still Polish and therefore Royal. Hence the Elector Frederick, to dispel any suspicion of his motives for taking the title of King in [East] Prussia, declares that it will not imply any prejudice to the rights of the King and Republic of Poland in West Prussia. And by Article VI of the Treaty referred to under the name of "Bydgostiense," the House of Hohenzollern had agreed that in the case of failure of male heirs, East Prussia should revert to Poland, which Treaty is solemnly confirmed by these *Lettres réversales*.

§ 709. Other instances of the past are the réversales given

<sup>1</sup> Bydgostia is the Latin name of Bromberg (Bydgoszcz).

<sup>2</sup> Kölln an der Spree, now a part of Berlin.

<sup>3</sup> Lamberty, i. 95. This title was changed in 1773, by Frederick the Great, into König von Preussen (Koch and Schoell, Brussels edit., iv. 313) after the acquisition of West Prussia by the first partition of Poland in 1772.

to Prussia in 1722 and France in 1745 on their recognition of the imperial titles of the Tsar and Tsaritz of Russia.<sup>1</sup>

§ 710. *Lettres réversales* seem almost to have become an obsolete form of compact, but a recent instance where the term is used is appended.

*Notes réversales concerning the Treaty of December 25, 1928, between Brazil and Bolivia, respecting Boundaries and Railway Communications. Rio de Janeiro, August 30, 1929.*<sup>2</sup>

(1)

The Bolivian Minister at Rio de Janeiro to the Brazilian Minister for Foreign Affairs.

[*Translation.*]

*Note Réversale.*

Bolivian Legation,  
Rio de Janeiro, August 30, 1929.

SIR,

With reference to the conversations which I have had the honour to hold with Your Excellency regarding the matters contemplated in Article 5 of the Treaty of December 25, 1928, and also to the understandings reached after a prolonged and reasoned exchange of views, I venture to put on record the following points :

1. As the commercial development between Brazil and Bolivia requires the early construction of the railway from Cochabamba to Santa Cruz, which is required to be extended on the one hand to the Amazon region, and on the other to the River Paraguay, and as the portion from Puerto Grether (on the River Ichilo) to Santa Cruz constitutes an important section of the main line, and is particularly contemplated in Article 5 of the treaty of December 25, 1928, it has been decided that the assistance of Brazil, consisting of one million pounds sterling, shall be wholly and exclusively used for the construction of the said line, the extent of which is 175 kilometres. This decision is without prejudice to the provisions of the said Article 5, relating to the construction by Bolivia of the other sections of the principal line, consisting, as regards the extension to the River Paraguay, of a modern transport road, subsequently convertible into a railway, according to the terms and under the conditions laid down in the said article.

2. The works will be carried out by the Bolivian Government. They shall commence within the period of six months from this date, and shall be completed in three years. The assistance agreed upon shall be rendered by the Brazilian Government placing one million pounds sterling at the disposition of the Bolivian Government at a banking house in London, within the period laid down in Article 5 of the treaty above referred to. This sum will be administered by the banking house in London in a current account opened

<sup>1</sup> Flassan, vi. 332 ; F. de Martens, *Recueil des Traités*, etc., v. 205.

<sup>2</sup> *Boletín del Ministerio de Relaciones Exteriores (de Bolivia)*, Sept.-Oct. 1929, p. 20.

in the name of the Bolivian Government, on which the latter will draw, through its paying offices, the sums necessary to carry out the railway works as they are constructed.

3. For the purposes of control in the employment of the assistance advanced by Brazil, no sum shall be withdrawn from the current account except by drafts of the National Treasury of Bolivia in favour of the constructors of the railway. For the same purpose the drafts shall be endorsed before payment by the Financial Delegate of Brazil in London.

4. It being to the mutual interest that the cost of the railway works in question be reduced to the lowest indispensable limit, both Governments agree that their departments and competent authorities shall grant the utmost facilities and exemptions possible in order that the works may be carried out with the maximum promptitude and minimum cost.

I have, etc.

(2)

The Brazilian Minister for Foreign Affairs to the Bolivian Minister at Rio de Janeiro.

(Substance similar to No. 1.)

## CHAPTER XXVII

### TREATIES AND OTHER INTERNATIONAL COMPACTS (continued)

#### RATIFICATION, ACCESSION, RESERVATIONS, NOTICE OF TERMINATION

##### RATIFICATION

§ 711. RATIFICATION is a solemn act on the part of a sovereign or by the president of a republic, by which he declares that a treaty, convention or other international compact has been submitted to him, and that after examining it he has given his approval thereto, and undertakes its complete and faithful observance. The whole text of the treaty, etc., should be reproduced in the instrument, which is signed by him and sealed with the seal of state.

§ 712. In the case of a bilateral treaty the instrument of ratification is exchanged for a similar one given by the other party to the treaty, and the fact of exchange is recorded in a certificate of exchange, which is ordinarily drawn up in the respective languages of the two parties, and signed in duplicate, each party retaining an original, in which it is given the customary precedence. As a rule the exchange is effected by the minister for foreign affairs of the one country and the diplomatic agent of the other. The issue of full powers for such a purpose is unnecessary, unless, as has occasionally happened, one of the parties should insist on this additional formality, the production of the instruments of ratification by a minister for foreign affairs or by an accredited diplomatic representative of the other high contracting party being sufficient evidence that the official who tenders it is duly authorised to proceed to the exchange.

§ 713. The form of certificate of exchange used in Great Britain is as follows :

The undersigned having met together for the purpose of exchanging the ratifications of.....between His

Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, and..... signed at.....on the.....day of.....and the respective ratifications of the said.....having been carefully compared and found to be exactly conformable to each other, the said exchange took place this day in the usual form.

In witness whereof they have signed the present certificate, and have affixed thereto their seals.

Done at London, the.....day of.....

If the treaty arrangement is between governments, and entails ratification, the above certificate is modified accordingly.

§ 714. In the case of an agreement concluded between governments, which provides for ratification, it seems appropriate (see § 581) that the ratification should be in the name of the government on whose behalf it was signed, and in British practice such a form of ratification is provided, and is shown in § 727. But in some countries the constitution may only admit of ratification being effected by the head of the state.

§ 715. When there are more than two contracting parties, and each has received a signed counterpart, a separate instrument of ratification is exchanged with each of the other parties, unless the treaty provides otherwise. But when a number of states participate, it is customary to have but one original text of the treaty, which is signed by the plenipotentiaries and deposited in the archives of the state wherein it was signed, each of the other parties being furnished by that state with a copy of the treaty as signed, certified by it as correct. (See § 579.) The instruments of ratification are then as a rule deposited with the government of that state, which, on the occasion of each successive deposit, delivers a formal acknowledgment, *acte d'acceptation* or *procès verbal* of deposit, to the state concerned, and at the same time notifies the fact of such deposit to all the other signatory states. The procedure to be followed in these cases is, however, ordinarily laid down in the treaty itself, and may sometimes entail a meeting of representatives of the signatory states for the purpose of depositing ratifications, and the signature of a *procès-verbal de dépôt*, or record of the proceedings, specifying the ratifications deposited, and any declarations, reservations, etc., made, a certified copy of such *procès-verbal* being communicated to each of the contracting states. (See, *e.g.*, § 676.)

A similar procedure is followed as regards the deposit of ratifications with the Secretary-General of the League of Nations in the case of treaties signed under the auspices of the League.

§ 716. While as a matter of strict procedure the text of the treaty should, as mentioned above, be reproduced in the instrument of ratification, the non-observance of this rule does not necessarily invalidate the ratification, provided the intention to confirm and ratify the treaty is fully expressed. On this point Oppenheim observes :

“ Sometimes the whole of the treaty is recited *verbatim* in the ratifying documents, but sometimes only the title, preamble and date of the treaty and the names of the signatory representatives are cited. As ratification is only the necessary confirmation of an already existing treaty, the essential requirement in a ratifying document is merely that it should refer clearly and unmistakably to the treaty to be ratified.”<sup>1</sup>

But as there can be no difficulty in following the more exact procedure, it is better to do so in all cases.

§ 717. In Great Britain the treaty-making power is vested in the sovereign, and the ratification of a treaty signed as between heads of states is effected by means of an instrument signed by the sovereign and sealed with the Great Seal. In practice the sovereign acts on the advice of his responsible ministers, and where the execution of the treaty involves a grant of the national funds, or a cession of territory, the approval of Parliament is first sought. If legislation is required to carry out the provisions of the treaty, the passing of such legislation is a preliminary. And within recent years, during Mr. Ramsay MacDonald's first premiership, a rule was made that the texts of all treaty instruments requiring ratification should lie on the Table of the House for twenty-one days before being ratified.<sup>2</sup>

§ 718. In France, Article 8 of the law of July 16, 1875, prescribes that the President of the Republic negotiates and ratifies treaties. He communicates them to the French Chambers as soon as the interest and the security of the state permit. Treaties of peace, commerce, and such as affect the status of French citizens or their property rights abroad, are only definitive when voted by the two Chambers. No cession, exchange or acquisition of territory can take place except in virtue of a law.

In the United States, § 2 of Article II of the Constitution gives power to the President, by and with the advice of the Senate, to make treaties, provided two-thirds of the senators present concur.

<sup>1</sup> i. § 515.

<sup>2</sup> See *British Year Book of International Law* (1924), 190, 191. This rule is still in force.

§ 719. What circumstances may justify a state in declining to ratify a treaty which has been negotiated and signed on its behalf by its authorised plenipotentiary is not a question of international *law*, although writers on that subject discuss it. It is rather one of morals and policy. Speaking of the Hague Conferences of 1899 and 1907, Dr. J. B. Scott observes :

“ The signing of a Convention by the delegates at The Hague creates no legal obligation. As the delegates act under instructions it does, however, create a moral obligation to submit the Conventions and signed Declarations to the appropriate branch of the Government in order to be duly approved by this body and to invest them with the force of law in so far as the particular country is concerned.”<sup>1</sup>

§ 720. Where, as in the United States, it is the President under whose direction the Secretary of State concludes and signs a treaty, but ratification is dependent on the advice and approval of the Senate, the refusal to ratify is sometimes consequent on other than the ordinarily recognised motives. In such a case the ratifying power sometimes adds new proposals, which transform the instrument into a new treaty entailing signature afresh. The other party is justified in refusing to accept the new conditions ; or may accept them. This happened in connection with the treaty of 1794 between Great Britain and the United States. The Senate proposed an Additional Article, which was accepted by the British Government.<sup>2</sup> But in 1807 the United States returned unratified the treaty signed in London on December 31, 1806, and proposed alterations therein. Canning, who was then Secretary of State for Foreign Affairs, protested against “ a practice altogether unusual in the political transactions of states,” and he announced that the King had no option, under the circumstances, but to acquiesce in the refusal of the President to ratify the treaty in question.<sup>3</sup> The first Hay-Pauncefote treaty of 1900 was modified by the United States Senate in consenting to its ratification, and in consequence it fell through. And more recently the treaties of peace signed by the United States representatives as the outcome of the Peace Conference at Paris in 1919 were not ratified by that country. In countries where the administration is the creation of a parliamentary majority such a contingency is less likely to arise, even when the consent of the legislature is necessary.

§ 721. In former times it was not the practice to make a

<sup>1</sup> *The Hague Conventions and Declarations of 1899 and 1907*, x.

<sup>2</sup> *Br. and For. State Papers*, i. 803.

<sup>3</sup> *Ibid.*, i. 1187.

reserve of ratification in a full power. Thus in the British full power given in § 133 there is a promise to hold as *grata, rata et accepta* in the fullest manner, and not to suffer anything to be done, in whole or in part, contrary to what the plenipotentiary may have agreed to and concluded. French, Spanish and Dutch full powers of those times were to the same effect. Nevertheless, it was from an early time customary, and was recognised by Bynkershoek as forming an established usage, to look upon ratification by the sovereign as necessary to impart validity to a treaty concluded by his plenipotentiary, and full powers were interpreted as conferring a general power of negotiating, subject to instructions received from time to time, and of concluding agreements, subject to the ultimate approval or otherwise of the sovereign.

§ 722. The practice of reserving the ratification of the sovereign had formerly its use when the plenipotentiary of one of the high contracting parties was negotiating at such a distance that he might perhaps not have time to refer the text of the instrument agreed upon to his government before signing. In modern times, when all the capitals of the civilised world are in telegraphic communication, it is the usual practice for plenipotentiaries to submit the precise wording of the proposed treaty to their governments for approval before signature, so that to withhold ratification can rarely be justified, except where the negotiating and ratifying authorities are distinct. At the present day the inclusion of a statement in the full powers given to plenipotentiaries that the acceptance of the treaty they may sign is "subject if necessary to ratification" is, however, of common occurrence, though the same fact is as a rule expressed in the treaty itself, or can be if desired. But the ratification of a treaty signed as the outcome of negotiations with another country or countries should not be capriciously withheld, and if refused it should be for solid reasons only.<sup>1</sup>

§ 723. Occasionally a treaty instrument which contains no provision for ratification is nevertheless made the subject of an exchange of ratifications, at the request of one or other government. Three such cases in 1904 were the Arbitration Agreements between Great Britain and Spain and Switzerland respectively, of February 27, 1904, and November 16, 1904, and the Agreement between Great Britain and France of October 13, 1904, referring to arbitration certain questions regarding Muscat Dhows.

§ 724. Sometimes it has been provided that a treaty shall

<sup>1</sup> Hall, 386.

enter into operation without waiting for the exchange of ratifications. An example is the Treaty of July 15, 1840, between Austria, Great Britain, Prussia, Russia and Turkey ; a recent instance is the Treaty of Commerce and Navigation between Great Britain and Roumania of August 6, 1930, which by exchange of notes was brought into provisional operation on the following day, pending its definitive entry into force upon the exchange of ratifications.

§ 725. The Treaties of Peace with Germany, Austria, Bulgaria and Hungary, which provided for deposits of ratifications at Paris, stated :

“ Powers of which the seat of the Government is outside Europe will be entitled merely to inform the Government of the French Republic through their diplomatic representative at Paris that their ratification has been given ; in that case they must transmit the instrument of ratification as soon as possible.”

The Treaty between the United Kingdom and China, of December 20, 1928, relating to the Chinese Customs Tariff, said in Article 4 :

“ The present Treaty shall be ratified and the ratifications shall be exchanged in London as soon as possible. It shall come into force on the date on which the two parties shall have notified each other that ratification has been effected.”<sup>1</sup>

The Commercial Convention between France and Hungary of October 13, 1925, said in Article 32 :

“ La présente convention sera ratifiée et les ratifications en seront échangées à Paris. En vertu des pouvoirs que la législation française lui confère, le Gouvernement français consent à ce qu'elle soit mise en vigueur 8 jours après que l'approbation du parlement hongrois lui aura été signifiée à Paris.”

A similar article (20) appears in the Commercial Convention between France and Latvia of October 30, 1924.

§ 726. The following is an example of the form of ratification given by His Majesty in respect of the United Kingdom of Great Britain and Northern Ireland :

George by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India, etc., etc., etc.,

To all and singular to whom these Presents shall come, Greeting.

Whereas a Treaty between Us and other Powers and States for

<sup>1</sup> *Treaty Series*, No. 10, 1929.

the limitation and reduction of naval armament was concluded and signed at London on the 22nd day of April, in the year of Our Lord one thousand nine hundred and thirty, by the plenipotentiaries of Us and of the said Powers and States, duly and respectively authorised for that purpose, which Treaty is word for word as follows :

(Texts of Treaty.)

We, having seen and considered the Treaty aforesaid, have approved, accepted and confirmed the same in all and every one of its Articles and Clauses, as We do by these Presents approve, accept, confirm and ratify them, in respect of Our United Kingdom of Great Britain and Northern Ireland and all parts of the British Empire which are not separate Members of the League of Nations,<sup>1</sup> for Ourselves, Our Heirs and Successors ; engaging and promising upon Our Royal Word that We will sincerely and faithfully perform and observe all and singular the things which are contained and expressed in the Treaty aforesaid, and that We will never suffer the same to be violated by any one, or transgressed in any manner, as far as it lies in Our power. For the greater testimony and validity of all which We have caused Our Great Seal to be affixed to these Presents, which We have signed with Our Royal Hand.

Given at Our Court of St. James, the 29th day of July, in the year of Our Lord one thousand nine hundred and thirty, and in the twenty-first year of Our Reign.

[*Seal.*]

(Signed) GEORGE R.I.

### § 727. Governmental ratification :

Whereas a Universal Postal Convention with Final Protocol, and Provisions regarding the conveyance of Letter Mails by Air, with Final Protocol, and also an Agreement concerning Insured Letters and Boxes, with Final Protocol, were signed at London on the 28th day of June, one thousand nine hundred and twenty-nine, by representatives of the Government of the United Kingdom of Great Britain and Northern Ireland and of the Governments of other Powers and States, which Convention, Provisions, Agreement and Protocols are word for word as follows :

(Texts.)

The Government of the United Kingdom of Great Britain and Northern Ireland, having considered the Convention, Provisions, Agreement and Protocols aforesaid, hereby confirm and ratify the same, and undertake faithfully to perform and carry out all the stipulations therein contained.

In witness whereof this instrument of ratification is signed and

<sup>1</sup> The phraseology varies with the particular treaty, *e.g.*, in respect of Our United Kingdom of Great Britain and Northern Ireland ; in respect of Our Dominion of . . . ; and in League of Nations treaties : in respect of Great Britain and Northern Ireland and all parts of the British Empire which are not separate Members of the League of Nations ; in respect of Great Britain and Northern Ireland ; etc. (See also § 787.)

sealed by His Britannic Majesty's Principal Secretary of State for Foreign Affairs.

Done at London, the third day of December, One thousand nine hundred and thirty.

[*Seal.*]

[*Signature.*]

### § 728. A French example :

Gaston Doumergue, Président de la République Française,  
A tous ceux qui les présentes Lettres verront, Salut :

Un Accord ayant été signé à Londres le 12 Juillet 1926 pour le remboursement des dettes de guerre de la France envers la Grande-Bretagne, Accord dont la teneur suit :

(*Texts.*)

Ayant vu et examiné le dit Accord, Nous l'avons approuvé et approuvons en vertu des dispositions de la Loi votée par le Sénat, et par la Chambre des Députés, Déclarons qu'il est accepté, ratifié et confirmé, et Promettons qu'il sera inviolablement observé.

En foi de quoi Nous avons donné les présentes, revêtues du Sceau de la République.

A Paris, le 27 Juillet, 1929.

[*Seal.*]

(Signed) GASTON DOUMERGUE.

Par le Président de la République.

Le Ministre des Affaires Étrangères,

(Signed) A. BRIAND.

### § 729. A Japanese example :

(*Translation.*)

(*Text of Treaty.*)

Hirohito,

By the Grace of Heaven, Emperor of Japan, seated on the Throne occupied by the same Dynasty changeless through ages eternal,

To all to whom these Presents shall come, Greeting !

Having perused and examined the London Naval Treaty, 1930, signed at London by Our Plenipotentiaries and by the Plenipotentiaries of the United States of America, the British Empire, France and Italy, on the twenty-second day of April in the fifth year of Showa, We hereby approve, accept and ratify the same.

In faith whereof, We have signed this instrument and have caused the Great Seal of the Empire to be affixed thereunto at Our Palace in Tokio, this second day of the tenth month of the fifth year of Showa, being the two thousand five hundred and ninetieth year from the Accession of the Emperor Jimmu.

[*Seal of the Empire.*]

(Signed) HIROHITO.

(Countersigned) BARON KIJURO SHIDEHARA,

Minister for Foreign Affairs.

## § 730. A United States example :

Herbert Hoover, President of the United States of America,  
To All to whom these Presents shall come, Greeting ;

Know Ye, That whereas a Treaty for the limitation and reduction of naval armament was concluded and signed at London on April 22, 1930, by the respective Plenipotentiaries of the President of the United States of America ; the President of the French Republic ; His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India ; His Majesty the King of Italy ; and His Majesty the Emperor of Japan ; a true copy of which Treaty is word for word as follows :

(Text of Treaty.)

And Whereas the Senate of the United States of America by their resolution of July 21, 1930 (two-thirds of the Senators present concurring therein), did advise and consent to the ratification of the said Treaty, subject to the following understandings :

“ That in ratifying said treaty the Senate does so with the distinct and explicit understanding that there are no secret files, documents, letters, understandings, or agreements which in any way, directly or indirectly, modify, change, add to, or take from any of the stipulations, agreements, or statements in said treaty ; and that the Senate ratifies said treaty with the distinct and explicit understanding that, excepting the agreement brought about through the exchange of notes between the Governments of the United States, Great Britain and Japan having reference to Article 19, there is no agreement, secret or otherwise, expressed or implied, between any of the parties to said treaty as to any construction that shall hereafter be given to any statement or provision contained therein.”

Now, therefore, be it known that I, Herbert Hoover, President of the United States of America, having seen and considered the said Treaty, do hereby, in pursuance of the aforesaid advice and consent of the Senate, ratify and confirm the same and every article and clause thereof, subject to the understandings set forth in the resolutions of the Senate herein above cited.

In Testimony whereof, I have caused the seal of the United States of America to be hereunto affixed.

Done at the city of Washington this twenty-second day of July in the year of our Lord one thousand nine hundred and thirty, and of the Independence of the United States of America the one hundred and fifty-fifth.

[Seal.]

(Signed) HERBERT HOOVER.

By the President.

(Signed) HENRY L. STIMSON,  
Secretary of State.

## ACCESSION, RESERVATIONS

§ 731. Treaties and conventions often contain provisions regarding the accession thereto of the Dominions, colonies, etc., of the High Contracting Parties, and the manner and conditions of such accession (see, *e.g.*, § 595 in the case of the Anglo-Turkish Commercial Treaty of March 1, 1930). Such terms as "application to" or "extension to" are sometimes used in place of accession. Instances are appended.

§ 732. Multilateral treaties concerning matters of general interest and concern ordinarily provide for the accession of non-signatory states. The Conventions of the Second Hague Peace Conference of 1907, *e.g.*, provided :

"Les Puissances non-signataires sont admises à adhérer à la présente Convention. La Puissance qui désire adhérer notifie par écrit son intention au Gouvernement des Pays-Bas en lui transmettant l'acte d'adhésion, qui sera déposé dans les archives du dit Gouvernement. Ce Gouvernement transmettra immédiatement à toutes les autres Puissances copie certifiée conforme de la notification ainsi que de l'Acte d'adhésion, en indiquant la date à laquelle il a reçu la notification."

§ 733. The International Convention for the Protection of Industrial Property, signed at The Hague, November 6, 1925, says in Article 16 :

"Les pays qui n'ont point pris part à la présente Convention seront admis à y adhérer sur leur demande.

"Cette adhésion sera notifiée par la voie diplomatique au Gouvernement de la Confédération suisse et par celui-ci à tous les autres.

"Elle emportera, de plein droit, accession à toutes les clauses et admission à tous les avantages stipulés par la présente Convention, et produira ses effets un mois après l'envoi de la notification faite par le Gouvernement de la Confédération suisse aux autres pays unionistes, à moins qu'une date postérieure n'ait été indiquée par le pays adhérent."

§ 734. Sometimes a treaty may remain open for a limited period, or even indefinitely, for signature by states which have not originally signed it, thus providing an alternative to accession. Article 31 of the Red Cross Convention signed at Geneva, July 27, 1929, *e.g.*, prescribes :

"La présente Convention, qui portera la date de ce jour, pourra, jusqu'au premier février 1930, être signée au nom de tous les pays représentés à la Conférence qui s'est ouverte à Genève le 1<sup>er</sup> juillet 1929, ainsi que des pays non représentés à cette Conférence qui participent aux Conventions de Genève de 1864 ou de 1906."

§ 735. Article 22 of the International Opium Convention signed at The Hague, January 23, 1912, provided :

“ Les Puissances non représentées à la conférence seront admises à signer la présente convention.

“ Dans ce but, le Gouvernement des Pays-Bas invitera, immédiatement après la signature de la convention par les plénipotentiaires des Puissances qui ont pris part à la conférence, toutes les Puissances de l'Europe et de l'Amérique non représentées à la conférence, à savoir : [*list of countries*]

à désigner un délégué muni des pleins pouvoirs nécessaires pour signer, à La Haye, la convention.

“ La convention sera munie de ces signatures au moyen d'un ‘protocole de signature de Puissances non représentées à la conférence,’ à ajouter après les signatures des Puissances représentées et mentionnant la date de chaque signature.

“ Le Gouvernement des Pays-Bas donnera tous les mois à toutes les Puissances signataires avis de chaque signature supplémentaire.”

There are other instances in the case of treaties concluded under the auspices of the League of Nations, such as the Protocol of December 16, 1920, establishing the Permanent Court of International Justice, the Opium Convention of February 19, 1925, etc.

§ 736. In the cases mentioned above the proper English equivalents of *adhérer* and *adhésion* are “accede” and “accession.”

§ 737. Certain writers have in the past drawn a distinction between *accession* and *adhésion* in the sense that *accession* placed a state under the same conditions as the states which originally negotiated and signed the treaty, whereas *adhésion* did not constitute a definite acceptance of those conditions.

At the present time any such distinctions appear rather to rest on the degree to which a state may by reservations qualify its acceptance of the provisions of a treaty, either when signing it, acceding to it, or ratifying it.<sup>1</sup>

§ 738. The question of the admissibility of reservations to general conventions was recently considered by the Committee for the Progressive Codification of International Law,<sup>2</sup> whose report, approved by the Council of the League of Nations on June 17, 1927, contains the following passages :

“ Although, in principle, treaties are confined, both as regards their conclusion and their effects, to the parties which have concluded them, they frequently contain clauses allowing third Powers to accede.

<sup>1</sup> See also Oppenheim, i. §§ 532-3.

<sup>2</sup> See also Malkin, *British Year Book of International Law* (1926), 141.

With regard to the conditions on which a Power which has not taken part in the negotiation of a treaty may thus associate itself with the Powers which have concluded it, the following observations may be made.

Analysis of the different forms of acquiescence given by a Power to a treaty concluded by other Powers has led a certain number of writers on international law to make a distinction between "accession" and "adhesion," whereby "accession" signifies the full and entire acceptance of the terms of a treaty concluded by other Powers, such acceptance precluding the possibility of any conditions or reservations being made to any of the clauses, and "adhesion" signifies an acceptance which may cover certain provisions only of the treaty.

International practice, particularly in modern times, does not recognise this theoretical distinction, and as a rule no account is taken of it.

In practice, not only are accession and adhesion commonly confused, but even "signature" does not now correspond to the meaning which is described above and which from the nature of things it might have been expected to retain, and it is for this reason that the question put to our Committee has arisen.

In the first place, the practice arose between Powers negotiating a general treaty of allowing a certain period for the signature of the Act which they drew up on a particular date but which they did not all sign on that date (*cf.* the Red Cross Convention of 1864). This must be regarded as only a sort of tolerance and courtesy among states and nothing more ; a signature given in such conditions is in reality ante-dated.

Subsequently, in treaties revising a previous treaty, the contracting parties admitted that the Powers signatory of the original treaty might sign the new treaty even if they had not taken part in the revision (*cf.* the Second Geneva Red Cross Convention of 1906) ; and ultimately the stage has been reached of leaving certain treaties open unconditionally for varying periods for signature by Powers that did not even participate in the elaboration of the treaty. Such was the case of the Opium Convention of February 19th, 1925.

A signature appended in these circumstances constitutes nothing more than an "accession" ; the Power signing in this way simply associates itself with the Powers which concluded the Treaty. It therefore accepts the latter under the same conditions as the contracting parties ; what they accepted it accepts. It cannot make any addition or modification, for such addition or modification would not be covered by the reciprocal agreement which constitutes the treaty concluded by the contracting Powers.

It no doubt frequently happens that, in the course of the negotiation of a treaty, agreement is reached between the contracting parties regarding a reservation which is put forward by one of them and accepted by the others. In such a case the former party

may naturally, when appending its signature to the act concluded, mention and maintain its reservation. The other contracting parties, when they also append their signatures, signify thereby that they have accepted the reservation and consent thereto.

But when the treaty declares, as we have seen above, that it permits signature by Powers which have not taken part in its negotiation, such signature can only relate to what has been agreed upon between the contracting Powers. In order that any reservation whatever may be validly made in regard to a clause of the treaty, it is essential that this reservation should be accepted by all the contracting parties, as would have been the case if it had been put forward in the course of the negotiations. If not, the reservation, like the signature to which it is attached, is null and void."

§ 739. The correct principle is therefore that reservations made by a state as a condition of its signing or acceding to a treaty must, as an essential preliminary, be brought to the knowledge of and accepted by the other contracting states. The same principle would naturally apply to reservations made at the time of ratifying a treaty, if these had not already been formulated and accepted by the other contracting states at the time of signature.

§ 740. Of another order, however, and one to which the above principle need not apply, are statements regarding the territorial limits within which a treaty shall apply. A state may often sign or accede to a treaty with the qualification that such signature or accession has reference only to a specified part of the sovereign's territories, or conversely that it does not apply to specified parts of those territories. In the case of the British Empire this form of qualification is of quite usual occurrence.

§ 741. *Accession of Great Britain to the Convention signed at Paris, March 20, 1883, for the Protection of Industrial Property. Paris, March 17, 1884.*

The undersigned, Ambassador Extraordinary and Plenipotentiary of H.M. the Queen of the United Kingdom of Great Britain and Ireland to the French Republic, declares that H.B.M., having had the International Convention for the Protection of Industrial Property, concluded at Paris on the 20th March, 1883, and the Protocol relating thereto, signed on the same date, laid before her, and availing herself of the right reserved by Article XVI of that Convention to states not parties to the original Convention, accedes, on behalf of the United Kingdom of Great Britain and Ireland, to the said International Convention for the Protection of Industrial Property, and to the said Protocol, which are to be considered as inserted word for word in the present Declaration, and formally engages, as far as regards the President of the French Republic

and the other High Contracting Parties, to co-operate on her part in the execution of the stipulations contained in the Convention and Protocol aforesaid.

The undersigned makes this Declaration on the part of H.B.M. with the express understanding that power is reserved to H.B.M. to accede to the Convention on behalf of the Isle of Man and the Channel Islands, and any of H.M.'s possessions, on due notice to that effect being given through H.M.'s Government.

In witness whereof the undersigned, duly authorised, has signed the present Declaration of Accession, and has affixed thereto the seal of his arms.

Done at Paris on the 17th day of March, 1884.

[*Seal and signature.*]

§ 742. *Accession of the United Kingdom to the International Convention of September 26, 1906, for the Prohibition of the Use of White Phosphorus in the Match Industry.*

H.M. Chargé d'Affaires at Berne to the President of the Swiss Confederation.

Berne,  
December 28, 1908.

MONSIEUR LE PRÉSIDENT,

In compliance with telegraphic instructions which I have received from H.M.'s Secretary of State for Foreign Affairs, I have the honour to notify to Y.E., as provided in Article V, the accession of the United Kingdom of Great Britain and Ireland to the Convention prohibiting the use of white (yellow) phosphorus in the manufacture of matches, which was signed at Berne on the 26th September, 1906.

I am to point out that the above-mentioned accession applies only to the United Kingdom.

I avail, etc.

[*Signature.*]

§ 743. *Notification of the Application to India of Certain Articles of the Treaty between Great Britain and Siam for the Revision of Treaty Arrangements, and of the Treaty of Commerce and Navigation. March 5, 1928.*

British Legation, Bangkok,  
March 5, 1928.

SIR,

I have the honour, in accordance with Article 9 of the General Treaty of July 14, 1925, between Great Britain and Siam, and in accordance with Article 34 of the Treaty of Commerce and Navigation of the same date between Great Britain and Siam, to inform Your Highness that my Government desire that the stipulations of Articles 2, 3 and 4 of the General Treaty, and the stipulations of the Treaty of Commerce and Navigation, shall apply to India.

2. I am instructed to add that this communication is subject to the following reservations ; firstly, that the privileges granted by the said treaties in their application to any state in India shall be subject to such modifications as are necessitated by the laws and regulations in force in any such state, or by reason of the legitimate exercise of the powers inherent in the ruler of any such state ; and, secondly, that the right to appoint consular officers or consular agents under Article 27 of the Treaty of Commerce and Navigation shall be restricted to seaport towns in British India.

3. I am informed by my Government that the term “ privileges ” covers all the advantages conferred by the treaties, and that under the first of the above reservations Siamese nationals in Indian states shall enjoy the rights of British subjects but not those of British protected persons ; and, further, that Calcutta, Rangoon, and Moulmein are all regarded as seaport towns in British India ; and that it is the policy of the Government of India to agree to the appointment of consular officers at seaports only.

4. I shall be glad to learn whether the Royal Siamese Government accept these reservations as thus interpreted.

I avail, etc.

§ 744. *Notification of Extension to the Commonwealth of Australia, etc., of the Anglo-French Civil Procedure Convention. London, March 8, 1928.*

Foreign Office, London,  
March 8, 1928.

SIR,

I have the honour, at the request of His Majesty's Government in the Commonwealth of Australia, to notify to you that His Britannic Majesty desires in accordance with paragraph (b) of the Final Provisions of the Anglo-French Civil Procedure Convention of February 2, 1922, to extend the Convention to the Commonwealth of Australia, Papua, Norfolk Island, and the Mandated Territory of New Guinea.

I have the honour to inform Your Excellency that the authorities to whom judicial and extra-judicial acts and “ commissions rogatoires ” should be transmitted are :

(List.)

In requesting that you will be so good as to acknowledge this communication on behalf of your Government, I have the honour to suggest that the exchange of notes thus constituted should be regarded as placing the matter on formal record, and that the extension of the terms of the Convention to the territories named should be considered as coming into force one month after the date of your reply.

I have the honour, etc.

§ 745. *Notification to German Government of Extension of Civil Procedure Convention to Northern Ireland. Berlin, May 4, 1929.*

British Embassy, Berlin,  
May 14, 1929.

SIR,

I have the honour, on instructions from His Majesty's Principal Secretary of State for Foreign Affairs, to inform Your Excellency that His Majesty's Government in Northern Ireland are desirous that the operation of the Anglo-German Civil Procedure Convention, signed at London on the 20th of March, 1928, should be extended to the territory under their administration.

2. In making this notification in accordance with Article 17 of the Convention, I am instructed to state that the Registrar of the Supreme Court of Judicature of Northern Ireland will act as the authority to which judicial and extra-judicial documents and "Letters of Request" should be addressed in Northern Ireland, and that communications and translations should be made in the English language.

3. I should be grateful if Your Excellency would be so good as to acknowledge the present notification. I am directed to suggest that the exchange of notes thus constituted should be regarded as placing the matter on formal record with effect as from one month after the date of the present note.

I avail, etc.

§ 746. *Declaration made by Great Britain on signing the Optional Clause of the Protocol establishing the Permanent Court of International Justice. Geneva, September 19, 1929.*<sup>1</sup>

On behalf of His Majesty's Government in the United Kingdom and subject to ratification, I accept as compulsory *ipso facto* and without special convention, on condition of reciprocity, the jurisdiction of the court in conformity with Article 36, paragraph 2, of the statute of the court, for a period of ten years and thereafter until such time as notice may be given to terminate the acceptance, over all disputes arising after the ratification of the present declaration with regard to situations or facts subsequent to the said ratification, other than :

Disputes in regard to which the parties to the dispute have agreed or shall agree to have recourse to some other method of peaceful settlement ; and

Disputes with the Government of any other member of the League which is a member of the British Commonwealth of Nations, all of which disputes shall be settled in such manner as the parties have agreed or shall agree ; and

Disputes with regard to questions which by international law fall exclusively within the jurisdiction of the United Kingdom.

And subject to the condition that His Majesty's Government reserve the right to require that proceedings in the court shall be

<sup>1</sup> *Parliamentary Paper, Misc.*, No. 8 (1929) ; see also Fischer Williams in *British Year Book of International Law* (1930), 63-84.

suspended in respect of any dispute which has been submitted to and is under consideration by the Council of the League of Nations, provided that notice to suspend is given after the dispute has been submitted to the Council and is given within ten days of the notification of the initiation of the proceedings in the court, and provided also that such suspension shall be limited to a period of twelve months or such longer period as may be agreed by the parties to the dispute or determined by a decision of all the members of the Council other than the parties to the dispute.

ARTHUR HENDERSON.

Geneva, September 19, 1929.

#### NOTICE OF TERMINATION

§ 747. As mentioned in § 571 treaties and conventions as a rule provide that they shall remain in force for a specified period, and that when that period is drawing to an end, notice of termination may be given by one or other party to the treaty, according to the conditions laid down therein. Others again may simply provide that notice of termination may be given at any time, and that, after the interval provided, this shall take effect.

§ 748. In the case of a bilateral treaty such notice usually takes the shape of a formal notification addressed to the other government through the diplomatic agent accredited to the latter, and may perhaps be accompanied by some statement of the reasons which render this step desirable or necessary. Occasionally, after such notice is given, the treaty may be maintained, on the basis of a *modus vivendi*, by means of an exchange of notes, pending its replacement by a new treaty; a notable instance is the Convention respecting Commercial and Maritime Relations between Great Britain and France of February 28, 1882, concerning which notice of termination was given by the French Government on September 10, 1918, but which is still maintained in force subject to a three months' further notice of termination on either side.

§ 749. In the case of a multilateral treaty it is usually provided that the notice shall be addressed to the government of the state wherein the treaty was signed, who shall inform the other contracting governments; or, in the case of a treaty arrangement signed under the auspices of the League of Nations, that it shall be addressed to the Secretary-General of the League. In these cases also, the reasons for the step taken may, or may not, be stated.

§ 750. In the case of the notice of termination given by Great Britain regarding the Hague Convention (No. VI) of

1907, concerning the status of enemy merchant ships on the outbreak of hostilities, it was considered desirable to place on record, in the form of a published despatch to His Majesty's representatives abroad, the motives which had compelled His Majesty's Government to take this step.

§ 751. *Notice of Termination by Great Britain of the Hague Convention (No. VI) of October 18, 1907, relative to the Status of Enemy Merchant Ships at the Outbreak of Hostilities.*

British Legation, The Hague,  
November 14, 1925.

MONSIEUR LE MINISTRE,

I have the honour by the present note to give notice of the denunciation of Hague Convention No. VI of October 18, 1907, relative to the status of enemy merchant ships at the outbreak of hostilities, to take effect on the expiry of one year from the present date, as provided for in Article 10 of the convention.

I request Your Excellency to be good enough to communicate a duly certified copy of this notification to all the other Powers signatory to the convention.

I avail, etc.

His Excellency (Signed) CHARLES M. MARLING.  
JONKHEER VAN KARNEBEEK.

*Notice of Termination of the Anglo-Norwegian Agreement of July 12, 1881, relative to the relief of distressed seamen. London, November 30, 1931.*

Royal Norwegian Legation, London,  
November 30, 1931.

SIR,

With reference to previous correspondence, last my note of October 25, 1926, in regard to the Agreement of July 12, 1881, relative to relief to be given to distressed seamen, I have the honour, acting under instructions from my Government, to inform you that the Norwegian Government, in compliance with the stipulations contained in the last paragraph of the said Agreement, desire to denounce the said Agreement as from January 1, 1932, the Agreement thus being terminated at the end of the year 1932.

The Norwegian Government simultaneously are denouncing the similar agreements regarding relief to distressed seamen which the Government also have contracted with other foreign Powers.

The reason for this step is that my Government have found that these agreements have not only been subject to very different interpretations in different countries but also within the different consulates of the same country. This has been found to create such a great incongruity and uncertainty as to the application of these agreements that the Norwegian Government have found them to be of little service. In the opinion of the Norwegian Government this disadvantage is not likely to be obviated by the conclusion of new and more detailed agreements on the subject.

On the other hand the requirement for agreements of this nature does not appear to be the same as in previous times. These two circumstances have caused the Norwegian Government to denounce all the agreements of this category.

My Government are of opinion that on the termination of the Norwegian-British Agreement of 1881 the exchange of notes of 1908 between the Norwegian and British Governments regarding the interpretation of the term of " third state " in the Agreement is also automatically discontinued.

I shall feel greatly obliged for receiving in due course your kind acknowledgment of the receipt of my present note.

I have the honour, etc.

[*Signature.*]

# BOOK IV

## THE BRITISH COMMONWEALTH OF NATIONS. THE LEAGUE OF NATIONS.

### CHAPTER XXVIII

#### THE BRITISH COMMONWEALTH OF NATIONS <sup>1</sup>

§ 752. THE British Empire extends over nearly a quarter of the land surface of the earth, and comprises populations in every stage of development, governed under various forms.

A main distinction exists between territories under His Majesty's sovereignty, and those classified as under His Majesty's protection and authority. Of the territories under His Majesty's sovereignty the chief divisions are : the United Kingdom of Great Britain and Northern Ireland ; the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State, which are Members of the League of Nations ; Newfoundland ; Southern Rhodesia ; Malta ; and the numerous Crown Colonies, geographically widely distributed, and not possessing responsible government. India, which is a Member of the League of Nations, comprises territories under His Majesty's sovereignty and states governed by native Rulers.

#### THE IMPERIAL CONFERENCE

§ 753. The Imperial Conference, now composed of representatives of the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State, Newfoundland and India, first met in 1911, having been formed under a resolution of the Colonial Conference of 1907, to the effect " That it will be to the advantage of the Empire if a Conference, to be called the Imperial Conference, is held every four years,

<sup>1</sup> See also P. Noel Baker, *The Present Juridical Status of the British Dominions in International Law* (1929).

at which questions of common interest may be discussed and considered as between His Majesty's Government and His Governments of the self-governing Dominions beyond the Seas. The Prime Minister of the United Kingdom will be *ex officio* President, and the Prime Ministers of the self-governing Dominions *ex officio* members of the Conference. The Secretary of State for the Colonies<sup>1</sup> will be an *ex officio* member of the Conference, and will take the chair in the absence of the President. He will arrange for such Imperial Conferences after communication with the Prime Ministers of the respective Dominions." The Imperial War Conference of 1917 passed a resolution to permit of India being represented at all future Conferences. The Irish Free State, which became a Dominion in 1922, was first represented at the Imperial Conference of 1923.<sup>2</sup>

§ 754. At the Imperial Conference of 1923 matters relating to the foreign policy of the British Empire were discussed, and a resolution adopted, recommending, for the acceptance of the Governments of the Empire, a specified procedure for the negotiation, signature and ratification of treaties.

§ 755. At the Imperial Conference of 1926 questions affecting Inter-Imperial relations were considered by a Committee of Prime Ministers and Heads of Delegations, with Lord Balfour as Chairman. Their report, which was unanimously adopted by the conference, contained the following passages :

"The Committee are of opinion that nothing would be gained by attempting to lay down a Constitution for the British Empire. Its widely scattered parts have very different characteristics, very different histories, and are at very different stages of evolution ; while, considered as a whole, it defies classification and bears no real resemblance to any other political organisation which now exists or has ever yet been tried.

"There is, however, one most important element in it which, from a strictly constitutional point of view, has now, as regards all vital matters, reached its full development—we refer to the group of self-governing communities, composed of Great Britain and the Dominions. Their position and mutual relation may be readily defined. *They are autonomous Communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.*"

"It will be noted that in the previous paragraphs we have made no mention of India. Our reason for limiting their scope to Great

<sup>1</sup> Now the Secretary of State for Dominion Affairs.

<sup>2</sup> *Dominions Office and Colonial Office List* (1931), lix.

Britain and the Dominions is that the position of India in the Empire is already defined by the Government of India Act, 1919. We would, nevertheless, recall that by Resolution IX of the Imperial War Conference, 1917, due recognition was given to the important position held by India in the British Commonwealth. Where, in this report, we have had occasion to consider the position of India, we have made particular reference to it.”<sup>1</sup>

§ 756. The committee at the same time made certain recommendations with a view of bringing existing forms into accordance with the position set forth. Questions of relations with foreign countries were also considered, and further recommendations made as regards treaty procedure, representation at international conferences and other matters.

§ 757. At the Imperial Conference of 1930 the report of a special conference which had been convened in 1929 to deal with questions concerning the operation of Dominion legislation and merchant shipping legislation came under consideration, and various recommendations were made in regard thereto, as well as on other matters concerning foreign relations.

§ 758. The results attained as the outcome of these deliberations may be conveniently set out under the heads of Inter-Imperial Relations, Relations with Foreign States, International Conferences, and Treaty Procedure.

#### INTER-IMPERIAL RELATIONS

§ 759. *The Royal Style and Titles*.—The establishment of the Irish Free State as a Dominion in 1922 rendered a slight alteration in the King's title desirable. By the Royal and Parliamentary Titles Act, 1927, and His Majesty's Proclamation of May 13, 1927, His Majesty's title now reads: “George V by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India.”

§ 760. In an Act of the Parliament of the United Kingdom, entitled the Statute of Westminster (22 Geo. V. ch. 4), which received His Majesty's assent on December 11, 1931, the following recital appears:

“And whereas it is meet and proper to set out by way of preamble to this Act, that inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of

<sup>1</sup> *Imperial Conference, 1926, Summary of Proceedings*, 14, 15.

all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom.”

§ 761. On the occasion of the illness of King George V in 1928, a Regency was appointed (see § 195). Exception was taken by the Irish Free State to its creation without Dominion assent, and only Regents who were members of the Royal Family signed documents in connection with the Irish Free State.<sup>1</sup>

§ 762. *Position of Governors-General.*—As an essential consequence of the equality of status existing among the members of the British Commonwealth of Nations, the Governor-General of a Dominion,<sup>2</sup> who is appointed by the Crown on the direct advice of the responsible Ministers in the Dominion concerned, is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by the King in Great Britain.<sup>3</sup>

§ 763. A personal flag for the Governor-General has been sanctioned by His Majesty in the case of the Dominion of Canada and the Union of South Africa.

§ 764. *Official Correspondence.*—Having regard to the position of the Governor-General as above defined, the recognised official channel of communication between the United Kingdom and the Dominions is between Government and Government,<sup>3</sup> and in accordance with the wishes of His Majesty's Governments in Canada, the Commonwealth of Australia, the Union of South Africa and the Irish Free State, this course is now followed. His Majesty's Government in New Zealand have not, however, expressed any desire to depart from the existing practice of communication through the Governor-General.

§ 765. *Titles of Governments.*—The full titles used in formal documents in referring to the Governments in the United Kingdom, the Dominions and India are :

“His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland.” In cases where no ambiguity can arise the shorter expression “His Majesty's Government in the United Kingdom” is used.

<sup>1</sup> Keith, *British Constitutional Law*, 35.

<sup>2</sup> The Governor of Newfoundland is in the same position as the Governor-General of a Dominion.

<sup>3</sup> *Imperial Conference*, 1926, *Summary of Proceedings*, 16 ; *Imperial Conference*, 1930, *Summary of Proceedings*, 27.

"His Majesty's Government in Canada."

"His Majesty's Government in the Commonwealth of Australia."

"His Majesty's Government in New Zealand."

"His Majesty's Government in the Union of South Africa."

"His Majesty's Government in the Irish Free State."

"His Majesty's Government in Newfoundland."

"The Government of India."

§ 766. *Inter-Communication*.—The Imperial Conference, 1926, adopted the following resolution :

"The Governments represented at the Imperial Conference are impressed with the desirability of developing a system of personal contact, both in London and in the Dominion capitals, to supplement the present system of inter-communication and the reciprocal supply of information on affairs requiring joint consideration. The manner in which any new system is to be worked out is a matter for consideration and settlement between His Majesty's Governments in Great Britain and the Dominions, with due regard to the circumstances of each particular part of the Empire, it being understood that any new arrangements should be supplementary to, and not in replacement of, the system of direct communication from Government to Government and the special arrangements which have been in force since 1918 for communications between Prime Ministers."<sup>1</sup>

§ 767. *High Commissioners*.—All the Dominions and India are represented in the United Kingdom by High Commissioners. His Majesty's Government in the United Kingdom are represented in Canada and the Union of South Africa by High Commissioners, and a Liaison Officer of the Commonwealth of Australia resides in London for the purpose of closer contact with the United Kingdom Government.

§ 768. The High Commissioners for Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa, the Irish Free State and Newfoundland in the United Kingdom have precedence on all ceremonial occasions (other than those when Ministers of the Crown from the respective Dominions are present) immediately after Secretaries of State. The same arrangement applies to the High Commissioner for India. A Minister of the Crown from a Dominion visiting the United Kingdom normally has precedence immediately before the High Commissioner concerned.<sup>2</sup>

§ 769. Under sect. 19 of the Finance Act, 1923, and sect. 26 of the Finance Act, 1925, the High Commissioners for the

<sup>1</sup> *Imperial Conference, 1926, Summary of Proceedings*, 27.

<sup>2</sup> *London Gazette*, Jan. 27, 1931.

Dominions and India in the United Kingdom, Agents-General and their staffs enjoy the same immunity from income tax (including super-tax) and land tax as that to which an accredited minister of a foreign state and his staff are entitled. In respect of other taxes and rates they are in practice accorded similar exemptions. The position does not appear at present to have given rise to any further development.

§ 770. *Operation of Dominion Legislation.*—Under the Act passed by the Parliament of the United Kingdom, entitled the Statute of Westminster (22 Geo. V. ch. 4), which received His Majesty's assent on December 11, 1931, it is, *inter alia*, in effect provided :

That Dominion Parliaments have full power to make laws having extra-territorial operation.

That the Colonial Laws Validity Act, 1865, shall not apply to any future law made by a Dominion Parliament.

That future laws made by Dominion Parliaments shall not be void or inoperative on the ground that they are repugnant to the law of England, or to any Act of Parliament of the United Kingdom, or any order, rule or regulation thereunder ; and that Dominion Parliaments have power to repeal or amend any such Act, order, rule or regulation, in so far as the same is part of the law of the Dominion.

That no future Act of the United Kingdom Parliament shall extend to a Dominion as part of the law in force there, unless it is declared in the Act that the Dominion has requested and consented to its enactment.

That the expression " colony " shall not in any future Act of Parliament of the United Kingdom include a Dominion or any province or state thereof.

§ 771. *Merchant Shipping Legislation.*—The above-mentioned Act also provides :

That sections 735 and 736 of the Merchant Shipping Act, 1894, shall be construed as though reference to the Legislature of a British possession did not include reference to a Dominion Parliament.

That section 4 of the Colonial Courts of Admiralty Act, 1890, and part of section 7, shall cease to have effect in any Dominion as from the commencement of the new Act.

Since the passing of this Act, each Dominion has, amongst its other powers, full and complete legislative authority over all ships within its territorial waters, or engaged in its coasting trade ; and also over its own registered ships both intra-territorially and extra-territorially. Such extra-territorial legislation will, of course, operate subject to local laws while the ship is within another jurisdiction.

To maintain uniformity, and to ensure concerted action between the Members of the British Commonwealth in shipping matters, an agreement was entered into on December 10, 1931, between His Majesty's Governments in the United Kingdom, Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa, the Irish Free State and Newfoundland (but does not yet extend to India), relative to British Commonwealth merchant shipping (under the heads of Common Status ; Standards of Safety ; Extra-territorial Operation of Laws ; Equal Treatment ; Ships' Articles, etc. ; Certificates of Officers ; Shipping Enquiries ; Relief and Repatriation of Seamen, Wages and Effects ; Offences on Board Ship ; and General).<sup>1</sup>

§ 772. *Commonwealth Tribunal*.—For the settlement on a voluntary basis of differences which are justiciable between Governments, an arbitral tribunal is to be constituted *ad hoc* in the case of each dispute, to consist of five members (one being chairman) drawn from within the British Commonwealth of Nations, and to be selected—one by each party to the dispute from states members of the Commonwealth other than the parties to the dispute ; one by each party to the dispute from any part of the Commonwealth ; these selecting another person as chairman. Expenses to be borne equally by the parties, each party bearing the expense of presenting its own case, and details as to which agreement may be necessary being arranged between the Governments concerned.<sup>2</sup>

§ 773. *Issue of Exequaturs to Foreign Consuls*.—Applications which may be received in London from foreign governments for the issue of exequaturs to persons appointed as consular officers in the Dominions are referred to the Dominion Government concerned for consideration, and if the latter agree to the issue of the exequatur, this, after signature by His Majesty, is sent to the Dominion Government for counter-signature by a Dominion minister.<sup>3</sup>

§ 774. *The Great Seal*.—The Court Circular of January 18, 1932, announces that the King received that day the High Commissioner for the Irish Free State in order that he might receive at the King's hands on behalf of His Majesty's Government in the Irish Free State the new Great Seal of the Irish Free State. A similar announcement was made in the Court Circular of March 21, 1932, as regards the new Great Seal of the Union of South Africa.

<sup>1</sup> See *Imperial Conference, 1930, Summary of Proceedings*, 24, 25, 32-7.

<sup>2</sup> *Imperial Conference, 1930, Summary of Proceedings*, 22-4.

<sup>3</sup> *Imperial Conference, 1926, Summary of Proceedings*, 26.

## RELATIONS WITH FOREIGN COUNTRIES

§ 775. *Dominion Diplomatic Representation*.—Envoys extraordinary and ministers plenipotentiary have been accredited by His Majesty to certain foreign countries in respect of certain of the Dominions :

In respect of Canada, to France, Japan and the United States.

In respect of the Union of South Africa, to Italy, the Netherlands and the United States.

In respect of the Irish Free State, to France, Germany, the United States and the Vatican.

§ 776. *Foreign Diplomatic Representation in the Dominions*.—Envoys extraordinary and ministers plenipotentiary have been accredited to His Majesty by certain foreign countries in respect of certain of the Dominions :

In respect of Canada, by France, Japan and the United States.

In respect of the Union of South Africa, by Italy, the Netherlands and the United States.

In respect of the Irish Free State, by France, Germany and the United States.

The Holy See has also appointed a Nuncio in the Irish Free State.

§ 777. It seems possible that questions may in future arise as to the privileges in one part of the Empire of foreign representatives accredited to His Majesty in respect of another part. Such questions might seemingly arise under such heads as (a) immunity from legal process, or (b) reliefs from taxation.

As regards (a) it might perhaps be deemed that such a question as, *e.g.*, whether a foreign minister accredited to His Majesty in respect of the Dominion of Canada would enjoy immunity in the Irish Free State, would be one for the Government or the Courts of the latter to determine ; while as regards (b) it might be assumed that, if only as a matter of courtesy, such reasonable facilities as could be accorded would be given. But until actual cases arise and are settled the position seems open to some doubt.

§ 778. *Diplomatic Representation in General*.—In cases other than where ministers in respect of the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and the Irish Free State may be accredited to foreign countries, or *vice versa*, the existing diplomatic channels continue to be used as between those Dominion Governments and foreign governments in matters

of general and political concern. The procedure recommended by the Imperial Conference, 1930, contemplates that if for reasons of urgency one of His Majesty's Governments in the Dominions mentioned communicates direct with one of His Majesty's diplomatic representatives appointed on the advice of His Government in the United Kingdom, the communication would indicate that, if practicable, he should, before taking any action, await a telegram from His Majesty's Government in the United Kingdom, with whom the Dominion Government would simultaneously communicate. But as regards subjects not falling within the category of matters of general and political concern, while the appropriate channel of communication primarily concerns the Dominion Government, it was felt that it would be to the general advantage if communications passed direct between His Majesty's Governments in the Dominions and the ambassador or minister concerned.<sup>1</sup> Such subjects may include the negotiation of commercial agreements affecting exclusively the Dominion Government and a foreign Power; complimentary messages, *e.g.* of congratulation or condolence from one government to another (in so far as these are not sent direct from government to government); invitations and replies to invitations to non-political congresses or conferences; facilities for British subjects belonging to the Dominions when visiting foreign countries; matters relating to civilian flights on recognised international air routes; legalisation and certification of documents; extradition formalities; requests for information of a technical or scientific character (including statistics and exchange of publications).

§ 779. *Notes Addressed to Foreign Governments at the Instance of Dominion Governments.*—Where a note is addressed to a foreign Government, at the instance of one of the Dominions mentioned above, by one of His Majesty's representatives abroad appointed on the advice of His Majesty's Government in the United Kingdom, the note begins: "At the instance of His Majesty's Government in (name of Dominion), and under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, I have the honour, etc." As His Majesty's Government in the United Kingdom continue to be responsible for the foreign affairs of all other parts of the Empire, the phrase is, however, only used in the case of the five Dominions mentioned.

§ 780. *Communication and Consultation in Relation to Foreign Affairs.*—In reviewing the recommendations made by previous

<sup>1</sup> *Imperial Conference, 1930, Summary of Proceedings*, 29.

Imperial Conferences with regard to the communication of information and the system of consultation in relation to treaty negotiations and the conduct of foreign affairs generally, the Imperial Conference, 1930, summarised them as follows :

“(a) Any of His Majesty’s Governments conducting negotiations should inform the other Governments of His Majesty in case they should be interested and give them the opportunity of expressing their views, if they think that their interests may be affected ;

(b) Any of His Majesty’s Governments on receiving such information should, if it desires to express any views, do so with reasonable promptitude ;

(c) None of His Majesty’s Governments can take any steps which might involve the other Governments of His Majesty in any active obligations without their definite assent.”<sup>1</sup>

§ 781. The Imperial Conference, 1930, emphasised the importance of ensuring the effective operation of these arrangements, the application of (a) not being confined to treaty negotiations ; and observed that the fullest possible interchange of information between His Majesty’s Governments in relation to all aspects of foreign affairs is of the greatest value to all the Governments concerned. They regarded the appointment of diplomatic representatives of His Majesty representing in foreign countries the interests of different members of the British Commonwealth as furnishing a most valuable opportunity for the interchange of information, not only as between the representatives themselves, but also between the respective Governments. They were impressed with the desirability of continuing to develop the system of personal contact between His Majesty’s Governments, though the precise arrangements to be adopted were for the consideration of the individual Governments. As regards (b), in the absence of comment, the negotiating Government should, as indicated in the Report of the Imperial Conference, 1926, be entitled to assume that no objection will be raised to its proposed policy.<sup>2</sup>

#### INTERNATIONAL CONFERENCES

§ 782. At the Imperial Conference, 1926, the conclusions reached as regards representation at International Conferences were as follows :

“ 1. No difficulty arises as regards representation at conferences convened by, or under the auspices of the League of Nations. In

<sup>1</sup> *Imperial Conference, 1930, Summary of Proceedings*, 28.

<sup>2</sup> *Ibid.*, 29 ; See also § 788.

the case of such conferences all members of the League are invited, and if they attend are represented separately by separate delegations. Co-operation is secured by the application of paragraph I, 1 (c) of the Treaty Resolution of 1923.<sup>1</sup>

2. As regards international conferences summoned by foreign governments, no rule of universal application can be laid down, since the nature of the representation must, in part, depend on the form of invitation issued by the convening government :

- (a) In conferences of a technical character, it is usual and always desirable that the different parts of the Empire should (if they wish to participate) be represented separately by separate delegations, and where necessary efforts should be made to ensure invitations which will render such representation possible ;
- (b) Conferences of a political character called by a foreign government must be considered on the special circumstances of each individual case.

It is for each part of the Empire to decide whether its particular interests are so involved, especially having regard to the active obligations likely to be imposed by any resulting treaty, that it desires to be represented at the conference, or whether it is content to leave the negotiation in the hands of the part or parts of the Empire more directly concerned and to accept the result.

If a Government desires to participate in the conclusion of a treaty, the method by which representation will be secured is a matter to be arranged with the other Governments of the Empire in the light of the invitation which has been received.

Where more than one part of the Empire desires to be represented, three methods of representation are possible :

- (i) By means of a common plenipotentiary or plenipotentiaries, the issue of Full Powers to whom should be on the advice of all parts of the Empire participating ;
- (ii) By a single British Empire delegation composed of separate representatives of such parts of the Empire as are participating in the conference. This was the form of representation employed at the Washington Disarmament Conference of 1921 ;
- (iii) By separate delegations representing each part of the Empire participating in the conference. If, as a result of consultation, this third method is desired, an effort must be made to ensure that the form of invitation from the convening government will make this method of representation possible.

Certain non-technical treaties should, from their nature, be concluded in a form which will render them binding upon all parts of the Empire, and for this purpose should be ratified with the concurrence of all the Governments. It is for each Government to decide to what extent its concurrence in the ratification will be

<sup>1</sup> See § 788 (c).

facilitated by its participation in the conclusion of the treaty, as, for instance, by the appointment of a common plenipotentiary. Any question as to whether the nature of the treaty is such that its ratification should be concurred in by all parts of the Empire is a matter for discussion and agreement between the Governments.”<sup>1</sup>

§ 783. Where foreign governments address invitations to His Majesty's Government in the United Kingdom to attend conferences, without indicating whether or not His Majesty's Governments in the Dominions are included in the invitation, or have been separately invited, it is customary to enquire of the foreign government whether similar invitations to His Majesty's Governments in Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa and the Irish Free State may be expected.

#### TREATY PROCEDURE

§ 784. The Imperial Conference, 1923, adopted a resolution recommending, for the acceptance of the Governments of the Empire represented, a specified procedure to be observed in the negotiation, signature and ratification of international agreements. The Imperial Conference, 1926, made further recommendations, in the light of experience, on various points of procedure. These combined recommendations may be conveniently set out under the heads of Form of Treaty ; Negotiation ; Full Powers ; Signature ; Ratification ; Entry into Force of Multilateral Treaties ; and Governmental Agreements.

#### FORM OF TREATY

§ 785. *Treaty between Heads of States*.—The Resolution of 1923 was prefaced by the following statement :

“The word “treaty” is used in the sense of an agreement which, in accordance with the normal practice of diplomacy, would take the form of a treaty between heads of states, signed by plenipotentiaries provided with full powers issued by the heads of the states, and authorising the holders to conclude a treaty.”<sup>2</sup>

The Imperial Conference, 1926, added :

“It is recommended that all treaties (other than agreements between governments), whether negotiated under the auspices of the League (of Nations) or not, should be made in the name of heads of states, and if the treaty is signed on behalf of any or all

<sup>1</sup> *Imperial Conference, 1926, Summary of Proceedings*, 24, 25.

<sup>2</sup> *Ibid.*, 20 n.

of the Governments of the Empire, the treaty should be made in the name of the King, as the symbol of the special relationship between the different parts of the Empire. The British units on behalf of which the treaty is signed should be grouped together in the following order : Great Britain and Northern Ireland and all parts of the British Empire which are not separate members of the League (of Nations), Canada, Australia, New Zealand, South Africa, Irish Free State, India. A specimen form of treaty as recommended is attached.

“In the case of a treaty applying to only one part of the Empire it should be stated to be made by the King on behalf of that part.”<sup>1</sup>

§ 786. *Specimen Form of Treaty*.—The specimen form of treaty attached was as follows :

The President of the United States of America, His Majesty the King of the Belgians, His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, His Majesty the King of Bulgaria, etc., etc.

Desiring .....

Have resolved to conclude a treaty for that purpose and to that end have appointed as their plenipotentiaries :

The President .....

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India,

for Great Britain and Northern Ireland and all parts of  
the British Empire which are not separate members of  
the League of Nations,

*A. B.*

for the Dominion of Canada,

*C. D.*

for the Commonwealth of Australia,

*E. F.*

for the Dominion of New Zealand,

*G. H.*

for the Union of South Africa,

*I. J.*

for the Irish Free State,

*K. L.*

for India,

*M. N.*

..... who,  
having communicated their full powers, found in good and due  
form, have agreed as follows :.....

<sup>1</sup> *Imperial Conference, 1926, Summary of Proceedings, 22-3.*

In faith whereof the above-named plenipotentiaries have signed the present treaty.

*A. B.*  
*C. D.*  
*E. F.*  
*G. H.*  
*I. J.*  
*K. L.*  
*M. N.*

(or if the territory for which each plenipotentiary signs is to be specified :

(for Great Britain, etc.).....*A. B.*  
 (for Canada) .....*C. D.*  
 (for Australia) .....*E. F.*  
 (for New Zealand) .....*G. H.*  
 (for South Africa).....*I. J.*  
 (for the Irish Free State) .....*K. L.*  
 (for India) .....*M. N.*)<sup>1</sup>

§ 787. *Treaties concluded by the United Kingdom.*—While the formula “for Great Britain and Northern Ireland and all parts of the British Empire which are not separate members of the League of Nations” is that generally used in League of Nations treaties signed in respect of the United Kingdom, and in certain other treaties of a general character, in other instances it is cast in the shorter form “for Great Britain and Northern Ireland” as sufficiently indicating the administration responsible.

#### NEGOTIATION

§ 788. The Resolution of the Imperial Conference, 1923, stated :

“ I. 1 (*a*) It is desirable that no treaty should be negotiated by any of the Governments of the Empire without due consideration of its possible effect on other parts of the Empire, or, if circumstances so demand, on the Empire as a whole :

(*b*) Before negotiations are opened with the intention of concluding a treaty, steps should be taken to ensure that any of the other Governments of the Empire likely to be interested are informed, so that, if any such Government considers that its interests would be affected, it may have an opportunity of expressing its views, or, when its interests are intimately involved, of participating in the negotiations :

(*c*) In all cases where more than one of the Governments of the Empire participates in the negotiations, there should be the fullest possible exchange of views between those Governments before and

<sup>1</sup> *Imperial Conference, 1926, Summary of Proceedings, 29.*

during the negotiations. In the case of treaties negotiated at International Conferences, where there is a British Empire delegation, on which, in accordance with the now established practice, the Dominions and India are separately represented, such representation should also be utilised to attain this object :

(d) Steps should be taken to ensure that those Governments of the Empire whose representatives are not participating in the negotiations should, during their progress, be kept informed in regard to any points arising in which they may be interested.”<sup>1</sup>

As regards (a) and (b) the Imperial Conference, 1926, added :

“This rule should be understood as applying to any negotiations which any Government intends to conduct, so as to leave it to the other Governments to say whether they are likely to be interested :

“When a Government has received information of the intention of any other Government to conduct negotiations, it is incumbent upon it to indicate its attitude with reasonable promptitude. So long as the initiating Government receives no adverse comments and so long as its policy involves no active obligations on the part of the other Governments, it may proceed on the assumption that its policy is generally acceptable. It must, however, before taking any steps which might involve the other Governments in any active obligations, obtain their definite assent.

“Where by the nature of the treaty it is desirable that it should be ratified on behalf of all the Governments of the Empire, the initiating Government may assume that a Government which has had full opportunity of indicating its attitude and has made no adverse comments will concur in the ratification of the treaty. In the case of a Government that prefers not to concur in the ratification of a treaty unless it has been signed by a plenipotentiary authorised to act on its behalf, it will advise the appointment of a plenipotentiary so to act.”<sup>2</sup>

#### FULL POWERS

§ 789. The Imperial Conference, 1926, made the following recommendation :

“The plenipotentiaries for the various British units should have full powers, issued in each case by the King, on the advice of the Government concerned, indicating and corresponding to the part of the Empire for which they are to sign. It will frequently be found convenient, particularly when there are some parts of the Empire on which it is not contemplated that active obligations will be imposed, but where the position of the British subjects belonging to these parts will be affected, for such Government to advise the

<sup>1</sup> *Imperial Conference, 1926, Summary of Proceedings*, 20 n.

<sup>2</sup> *Ibid.*, 22.

issue of full powers on their behalf to the plenipotentiary appointed to act on behalf of the Government or Governments mainly concerned. In other cases provision might be made for accession by other parts of the Empire at a later date.”<sup>1</sup>

## SIGNATURE

§ 790. The Resolution of the Imperial Conference, 1923, laid down :

“(a) Bilateral treaties imposing obligations on one part of the Empire only should be signed by a representative of the Government of that part. The full power issued to such representative should indicate the part of the Empire in respect of which the obligations are to be undertaken, and the preamble and text of the treaty should be so worded as to make its scope clear ;

(b) Where a bilateral treaty imposes obligations on more than one part of the Empire, the treaty should be signed by one or more plenipotentiaries on behalf of all the Governments concerned ;

(c) As regards treaties negotiated at international conferences, the existing practice of signature by plenipotentiaries on behalf of all the Governments of the Empire represented at the conference should be continued, and the full powers should be in the form employed at Paris and Washington.”<sup>2</sup>

The Imperial Conference, 1926, added :

“In the cases where the names of the countries are appended to the signatures in a treaty, the different parts of the Empire should be designated in the same manner as is proposed in regard to the list of plenipotentiaries in the preamble to the treaty. The signatures of the plenipotentiaries of the various parts of the Empire should be grouped together in the same order as is proposed above.”<sup>3</sup>

“The signature of a treaty on behalf of a part of the Empire should cover territories for which a mandate has been given to that part of the Empire, unless the contrary is stated at the time of the signature.”<sup>4</sup>

§ 791. *Mandated Territories*.—The territories in respect of which mandates have been accepted by His Majesty on behalf of the League of Nations are grouped as follows :

Palestine, Tanganyika Territory, Cameroons (British sphere) and Togoland (British sphere), under the control of His Majesty's Government in the United Kingdom.

New Guinea, and the neighbouring islands in the Pacific Ocean, under the control of His Majesty's Government in the Commonwealth of Australia.

<sup>1</sup> *Imperial Conference, 1926, Summary of Proceedings, 23.*

<sup>2</sup> *Ibid.*, 20 n.

<sup>3</sup> See § 786.

<sup>4</sup> *Imperial Conference, 1926, Summary of Proceedings, 23.*

Western Samoa, under the control of His Majesty's Government in New Zealand.

South West Africa, under the control of His Majesty's Government in the Union of South Africa.

A mandate for Nauru was given to the British Empire.

#### RATIFICATION

§ 792. The Imperial Conference of 1923 recommended that the existing practice in connection with the ratification of treaties should be maintained. This practice was set out as follows :

“(a) The ratification of treaties imposing obligations on one part of the Empire is effected at the instance of the Government of that part :

(b) The ratification of treaties imposing obligations on more than one part of the Empire is effected after consultation between the Governments of those parts of the Empire concerned. It is for each Government to decide whether Parliamentary approval or legislation is required before desire for, or concurrence in, ratification is intimated by that Government.”<sup>1</sup>

#### ENTRY INTO FORCE OF MULTILATERAL TREATIES

§ 793. The Imperial Conference, 1926, recommended :

“In general, treaties contain a ratification clause and a provision that the treaty will come into force on the deposit of a certain number of ratifications. The question has sometimes arisen in connection with treaties negotiated under the auspices of the League of Nations whether, for the purpose of making up the number of ratifications necessary to bring the treaty into force, ratifications on behalf of different parts of the Empire which are separate members of the League should be counted as separate ratifications. In order to avoid any difficulty in future, it is recommended that, when it is thought necessary that a treaty should contain a clause of this character, it should take the form of a provision that the treaty should come into force when it has been ratified on behalf of so many separate members of the League.”<sup>2</sup>

#### GOVERNMENTAL AGREEMENTS

§ 794. As regards Agreements other than those between heads of states, *i.e.* Agreements between Governments, the Resolution of the Imperial Conference, 1923, stated :

<sup>1</sup> *Imperial Conference, 1926, Summary of Proceedings*, 21 n.

<sup>2</sup> *Ibid.*, 24.

“ Apart from treaties made between heads of states, it is not unusual for agreements to be made between governments. Such agreements, which are usually of a technical or administrative character, are made in the names of the signatory governments, and signed by representatives of those governments, who do not act under full powers issued by the heads of the states ; they are not ratified by the heads of the states, though in some cases some form of acceptance or confirmation by the governments concerned is employed. As regards agreements of this nature the existing practice should be continued, but before entering on negotiations the Governments of the Empire should consider whether the interests of any other part of the Empire may be affected, and, if so, steps should be taken to ensure that the Government of such part is informed of the proposed negotiations, in order that it may have an opportunity of expressing its views.”<sup>1</sup>

<sup>1</sup> *Imperial Conference, 1926, Summary of Proceedings, 21 n.*

## CHAPTER XXIX

### THE LEAGUE OF NATIONS

§ 795. THERE is a very extensive field of literature on the subject of the League of Nations, in which the origin, constitution and functions of the League are examined, its work reviewed and its future discussed. Here only a brief survey is possible. A list of many of these publications will be found in § 167A of the first volume of the fourth edition of Oppenheim's "International Law." The author remarks that "the League of Nations is intended to take the place of what hitherto used to be called the Family of Nations, namely, the community of civilised states, for the international conduct of which international law has grown up. The Covenant of the League is an attempt to organise the hitherto unorganised community of states by a written constitution. That this constitution is not complete and perfect matters as little as that for the moment there are still some civilised states outside the League, because this constitution will gradually become more complete and perfect, and the time may not be very distant when all civilised states, without exception, will be members."<sup>1</sup>

§ 796. The Covenant of the League was framed at the Peace Conference at Paris in 1919, and forms an integral part of the Treaties of Peace with Germany (June 28, 1919), Austria (September 10, 1919), Bulgaria (November 27, 1919) and Hungary (June 4, 1920). It first became effective with the initial deposit of ratifications of the Treaty of Peace with Germany on January 10, 1920. It was not included in the Treaty of Peace with Turkey, signed at Lausanne on July 24, 1923, though it had been in the former treaty which was signed at Sèvres on August 10, 1920, but never became effective. The above-mentioned countries were not, however, named in the list of the original members of the League, or in the list of those invited to accede, which formed the Annex to the Covenant, but all, with the exception of Turkey, have since acceded. On the other hand, the United States, Ecuador and the Hedjaz,

<sup>1</sup> § 167c.

which were named in the former list, have not ratified such of the above peace treaties as were signed on their behalf, while Brazil and Costa Rica, which had become members, have since withdrawn. Applications for membership made by Monaco and San Marino did not materialise, while those made by Armenia, Azerbaijan, Georgia, Liechtenstein and the Ukraine were refused. Important countries which have remained outside the League are the United States, Russia and Turkey. Any fully self-governing State, Dominion or Colony may become a member if its admission is agreed to by two-thirds of the Assembly, provided that it gives effective guarantees of its sincere intention to observe its international obligations and accepts such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments. Any member may withdraw after giving two years' notice of its intention to do so.

§ 797. Applications for membership of the League are subject to the following tests : (i) Is the application for admission in order ? (ii) Is the Government applying for admission recognised *de jure* or *de facto*, and by which states ? (iii) Is the applicant a nation with a stable government and settled frontiers ? (iv) Is it fully self-governing ? (v) What has been its conduct, including both acts and assurances, with regard to (a) its international obligations ; (b) the prescriptions of the League as to armaments ? <sup>1</sup>

§ 798. The Members of the League at present number 55, viz. :

<del>Abyssinia</del>	Dominican Republic
<del>Albania</del>	Estonia
Argentine Republic	Finland
Australia	France
Austria	<del>Germany</del>
Belgium	Greece
Bolivia	Guatemala
British Empire	Haiti
Bulgaria	Honduras
Canada	Hungary
Chile	India
China	Irish Free State
Colombia	<del>Italy</del>
Cuba	<del>Japan</del>
Czechoslovakia	Latvia
Denmark	Liberia

<sup>1</sup> *Records of First Assembly, Committees*, ii. 159, 212.

Lithuania	Portugal
Luxemburg	Roumania
Mexico	Salvador
Netherlands	Siam
New Zealand	Spain
Nicaragua	Sweden
Norway	Switzerland
Panamá	Union of South Africa
Paraguay	Uruguay
Persia	Venezuela
Peru	Yugoslavia
Poland	

§ 799. The terms of the Covenant of the League are as follows :

THE HIGH CONTRACTING PARTIES,

In order to promote international co-operation and to achieve international peace and security,

- by the acceptance of obligations not to resort to war,
- by the prescription of open, just and honourable relations between nations,
- by the firm establishment of the understandings of international law as the actual rule of conduct among Governments,
- and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another,

Agree to this Covenant of the League of Nations.

Art. 1.—1. The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

2. Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.

3. Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

Art. 2.—The action of the League under this Covenant shall be

effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

Art. 3.—1. The Assembly shall consist of Representatives of the Members of the League.

2. The Assembly shall meet at stated intervals and from time to time as occasion may require at the Seat of the League or at such other place as may be decided upon.

3. The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

4. At meetings of the Assembly, each Member of the League shall have one vote, and may have not more than three Representatives.

Art. 4.—1. The Council shall consist of Representatives of the Principal Allied and Associated Powers,<sup>a</sup> together with Representatives of four other Members of the League. These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Spain and Greece shall be members of the Council.

2. With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall always be Members of the Council<sup>b</sup>; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.<sup>c</sup>

2 bis.<sup>1</sup> *The Assembly shall fix by a two-thirds majority the rules dealing with the election of the non-permanent Members of the Council, and particularly such regulations as relate to their term of office and the conditions of re-eligibility.*

3. The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

4. The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

5. Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member at any

<sup>a</sup> The Principal Allied and Associated Powers are the following : The United States of America, the British Empire, France, Italy and Japan (see Preamble of the Treaty of Peace with Germany). As to the United States of America, see § 796 above.

<sup>b</sup> In virtue of this paragraph of the Covenant, Germany was nominated as a permanent Member of the Council on September 8, 1926.

<sup>c</sup> The number of Members of the Council selected by the Assembly was increased to six instead of four by virtue of a resolution adopted at the Third ordinary meeting of the Assembly on September 25, 1922. By a resolution taken by the Assembly on September 8, 1926, the number of Members of the Council selected by the Assembly was increased to nine.

<sup>1</sup> This Amendment came into force on July 29, 1926, in accordance with Article 26 of the Covenant.

meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

6. At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one Representative.

Art. 5.—1. Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

2. All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting.

3. The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

Art. 6.—1. The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required.

2. The first Secretary-General shall be the person named in the Annex; thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly.

3. The secretaries and staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council.

4. The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council.

5.<sup>1</sup> *The expenses of the League shall be borne by the Members of the League in the proportion decided by the Assembly.*

Art. 7.—1. The Seat of the League is established at Geneva.

2. The Council may at any time decide that the Seat of the League shall be established elsewhere.

3. All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

4. Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

5. The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

Art. 8.—1. The Members of the League recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

2. The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

<sup>1</sup> This Amendment came into force on August 13, 1924, in accordance with Article 26 of the Covenant.

3. Such plans shall be subject to reconsideration and revision at least every ten years.

4. After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

5. The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

6. The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval and air programmes and the condition of such of their industries as are adaptable to warlike purposes.

Art. 9.—A permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military, naval and air questions generally.

Art. 10.—The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

Art. 11.—1. Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary-General shall on the request of any Member of the League forthwith summon a meeting of the Council.

2. It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

Art. 12.<sup>1</sup>—1. The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration *or judicial settlement* or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators *or the judicial decision* or the report by the Council.

2. In any case under this Article the award of the arbitrators *or the judicial decision* shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

<sup>1</sup> The Amendments printed in italics came into force on September 26, 1924, in accordance with Article 26 of the Covenant.

Art. 13.<sup>1</sup>—1. The Members of the League agree that whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration *or judicial settlement*, and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration *or judicial settlement*.

2. Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration *or judicial settlement*.

3. *For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them.*

4. The Members of the League agree that they will carry out in full good faith any award *or decision* that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award *or decision*, the Council shall propose what steps should be taken to give effect thereto.

Art. 14.—The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

Art. 15.—1.<sup>2</sup> If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration *or judicial settlement* in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

2. For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

3. The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

<sup>1</sup> The Amendments printed in italics came into force on September 26, 1924, in accordance with Article 26 of the Covenant.

<sup>2</sup> The Amendment to the first paragraph of this Article came into force on September 26, 1924, in accordance with Article 26 of the Covenant.

4. If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

5. Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

6. If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

7. If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

8. If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

9. The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute provided that such request be made within fourteen days after the submission of the dispute to the Council.

10. In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

Art. 16.—1. Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall ipso facto be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

2. It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military,

naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

3. The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

4. Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

Art. 17.—1. In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council.

2. Upon such invitation being given the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

3. If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

4. If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

Art. 18.—Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

Art. 19.—The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.

Art. 20.—1. The Members of the League severally agree that

this Covenant is accepted as abrogating all obligations or understandings inter se which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

2. In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations.

Art. 21.—Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine, for securing the maintenance of peace.

Art. 22.—1. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

2. The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

3. The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

4. Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

5. Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

6. There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their

population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

7. In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

8. The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

9. A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

Art. 23.—Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League :

- (a) will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organisations ;
- (b) undertake to secure just treatment of the native inhabitants of territories under their control ;
- (c) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs ;
- (d) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest ;
- (e) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914–1918 shall be borne in mind ;
- (f) will endeavour to take steps in matters of international concern for the prevention and control of disease.

Art. 24.—1. There shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

2. In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

3. The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

Art. 25.—The Members of the League agree to encourage and promote the establishment and co-operation of duly authorised voluntary national Red Cross organisations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.

Art. 26.—1. Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

2. No such amendments shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

#### ANNEX <sup>1</sup>

##### *I. Original Members of the League of Nations.*

United States of America.	Haiti.
Belgium.	Hedjaz.
Bolivia.	Honduras.
Brazil.	Italy.
British Empire.	Japan.
Canada.	Liberia.
Australia.	Nicaragua.
South Africa.	Panamá.
New Zealand.	Peru.
India.	Poland.
China.	Portugal.
Cuba.	Roumania.
Ecuador.	Serb-Croat-Slovene State.
France.	Siam.
Greece.	Czechoslovakia.
Guatemala.	Uruguay.

##### *States invited to accede to the Covenant.*

Argentine Republic.	Persia.
Chile.	Salvador.
Colombia.	Spain.
Denmark.	Sweden.
Netherlands.	Switzerland.
Norway.	Venezuela.
Paraguay.	

<sup>1</sup> See now § 798.

II. *First Secretary-General of the League of Nations.*

The Hon. Sir JAMES ERIC DRUMMOND, K.C.M.G., C.B.

§ 800. The terms of the Covenant may be thus classified :

(1) Purposes of the League. The Preamble declares these to be the promotion of international co-operation and the achievement of international peace and security ; and sets out conditions for their fulfilment.

(2) Membership. Governed by Articles 1, 16 (4) and 26 (2).

(3) Organs. The Assembly and the Council, with the Permanent Secretariat (Article 2). Their composition, times of meeting, powers, procedure, etc. (Articles 3 to 6).

(4) Expenses. Contribution of Members (Article 6 (5)).

(5) Seat. At Geneva, but may be elsewhere (Article 7 (1), (2)).

(6) No distinction of sex in positions under or in connection with the League (Article 7 (3)).

(7) Diplomatic privileges. To be enjoyed by representatives of Members and by officials when engaged on the business of the League ; buildings to be inviolable (Article 7 (4), (5)).

(8) Reduction of armaments ; control of manufacture of munitions and implements of war (Article 8) ; permanent commission (Article 9) ; supervision of trade (Article 23 (d)).

(9) Territorial integrity and political independence of Members. Obligation to respect and preserve (Article 10).

(10) War or threat of war. Concerns the whole League ; action to be taken (Article 11).

(11) Disputes likely to lead to rupture. Obligation to submit to arbitration or judicial settlement or to enquiry by Council (Article 12).

(12) Disputes suitable for submission to arbitration or judicial settlement ; obligation so to submit (Article 13). Disputes not so submitted, to be submitted to Council ; procedure in latter case (Article 15).

(13) Permanent Court of International Justice ; establishment (Article 14).

(14) Resort to war in disregard of Articles 12, 13 or 15. Measures to be taken (Article 16).

(15) Disputes between states of which one or all are not Members. Invitation to accept obligations of membership for purposes of settlement ; measures if refused (Article 17).

(16) Treaties. Registration and publication (Article 18) ; revision or abrogation where inconsistent with Covenant (Articles 19, 20) ; engagements consistent with Covenant not affected (Article 21).

(17) Mandated territories. Tutelage on behalf of the League ; mandates ; annual reports ; permanent commission (Article 22).

(18) Tasks to be undertaken by members. Fair and humane conditions of labour ; just treatment of natives ; supervision over agreements regarding traffic in women and children, opium and dangerous drugs ; supervision over trade in arms and ammunition ; freedom of communication and transit ; international concern for prevention and control of disease (Article 23). Co-operation of Red Cross organisations for the latter purpose (Article 25).

(19) International Bureaux. To be placed under the direction of the League (Article 24).

(20) Amendments to Covenant. Conditions (Article 26).

§ 801. Besides the Covenant there are many treaty provisions which attribute rights and duties to the League, such as Articles 387-427 of the Treaty of Versailles, and the corresponding Articles of other Treaties of Peace, relative to the International Labour Organisation ; Articles 45-50 of the Treaty of Versailles relative to the Saar territory, which is administered by the League in the capacity of trustee, and is governed by a commission of five persons, nominated by the Council, of whom one is appointed President ; Article 80 of the Treaty of Versailles, regarding the independence of Austria ; Articles 100-108 of the Treaty of Versailles regarding the Free City of Danzig, which is placed under the protection of the League, and where a high commissioner appointed by the Council resides ; Article 73 of the Treaty of Peace with Hungary, regarding the independence of Hungary ; various Articles in post-war treaties, conventions, declarations, etc., for the protection of minorities ; Article 19 of the Statute of the Permanent Court of International Justice, etc. In addition there are now also many treaties concluded under the auspices of the League itself which attribute to it rights and obligations in respect of their provisions.

§ 802. The sphere of action of the League comprises all rights and duties arising from the Covenant or other treaties, in so far as they attribute rights and duties to the League which are accepted by it.

The regular organs of the League are the Assembly and the Council, together with certain standing committees and other auxiliary organisations and a permanent Secretariat established at Geneva.

§ 803. The Assembly, as the chief organ of the League,

consists of representatives of all the Members of the League, which are theoretically equal. It meets annually in September, but may also meet at other times, or a Special Session may be summoned. Each Member of the League may send three representatives, who exercise but a single vote. The competence of the Assembly, by Article 3 of the Covenant, extends to any matter within the sphere of action of the League or affecting the peace of the world. It determines the lines of policy to be adopted by the League, reviews at its annual session the work of the preceding year, and deals with all matters placed on the agenda, prepared in advance by the Secretary-General with the approval of the President of the Council. It admits new Members to the League, selects the non-permanent members of the Council, examines differences which the Council brings before it, votes amendments to the Covenant, approves the budget, proceeds conjointly with the Council to the election of judges of the Permanent Court of International Justice, etc. The Rules of Procedure governing its meetings are shown in § 808.

All decisions of the Assembly, except on matters of procedure, require unanimity. The usual practice is for the Assembly, after a preliminary general debate in which most of the principal delegates take part, to resolve itself into six committees for the purpose of detailed discussions. These committees, which between them cover the whole field of League activities, report at the end of their labours to the plenary session. Decisions are taken in committee by a majority vote, but the resolutions of the committee must, to be effective, be accepted unanimously by the Assembly in plenary session.<sup>1</sup>

§ 804. The Council of the League is a smaller body, composed of representatives of the five permanent members, viz. the British Empire, France, Germany, Italy and Japan, together with representatives of the nine non-permanent members—at the present time China, Guatemala, the Irish Free State, Norway, Panamá, Peru, Poland, Spain and Yugoslavia. The latter are elected, on a system of rotation, for a term of three years, and the Assembly elects three non-permanent members annually on the expiration of the term of a corresponding number of those previously elected. Article 4 (5) of the Covenant provides for the representation on the Council of one or more additional members in the circumstances contemplated by that clause, and Article 17 presumably entails a similar procedure. The Council customarily meets in January, May and September of each year—in

<sup>1</sup> *Parliamentary Paper, Misc.*, No. 1 (1932).

the latter case sitting concurrently with the Assembly—but extraordinary sessions are held in cases of necessity. Each member has a single representative and a single vote.

§ 805. The competence of the Council, like that of the Assembly, extends, under Article 4 (4) of the Covenant, to any matter within the sphere of action of the League or affecting the peace of the world. Its functions and those of the Assembly are in general set out in the various Articles of the Covenant, and these may entail the co-operation of both. But it may declare itself competent in virtue of any Article of the Covenant.<sup>1</sup> The Council deals directly with the special questions arising throughout the course of the year, and it has become the executive organ of the League to give effect to decisions of the Assembly, and to direct the many permanent activities of the League and the organisations concerned with their fulfilment. It takes action on matters remitted to it by the Assembly; considers at regular intervals the reports of the technical organs and advisory committees of the League; and deals with any other questions on its agenda. In cases of emergency, any Member of the League may demand a special meeting of the Council. Any Member of the League not represented on the Council has the right to send a representative to sit as a member of the Council during the consideration of any question specially affecting the member in question. Except in matters of procedure, or where otherwise specifically provided, decisions of the Council must be taken unanimously.<sup>2</sup> It presents annually to the Assembly a report upon the work accomplished.

§ 806. The Secretariat has at its head the Secretary-General, assisted by a Deputy Secretary-General and three Under Secretaries-General, and the staff includes nationals of almost every Member of the League. It comprises eleven sections, a liaison service, treasury, and twelve auxiliary offices. The sections are Political; Administrative and Minorities; Mandates; Social Questions and Opium Traffic; Disarmament; Legal; Information; Economic and Financial; Communications and Transit; Health; Intellectual Co-operation and International Bureaux. Each of the sections deals with the special matters with which it is concerned, and furnishes reports thereon. The Secretary-General attends the meetings of the Assembly and the Council; and the Secretariat makes all necessary arrangements for these meetings, and for conferences which are from time to time convoked by the League. It records the proceedings at these various meetings, prepares and pub-

<sup>1</sup> *Report of the Committee of the Council, March 15, 1927, approved by the Council, Dec. 6, 1927.*

<sup>2</sup> *Parliamentary Paper, Misc., No. 1 (1932).*

lishes the official documents of the League in French and English, registers and publishes international treaties and engagements, and publishes all other information which is made available from time to time by the League. It is in close touch with the delegates and experts of the different countries, with the permanent delegations established at Geneva, with organisations associated with or concerned in the work of the League, and with public opinion in general. It furnishes a report annually to the Assembly.

§ 807. The organisations connected with the work of the League, or closely associated with it, amount to a large number. They may be classed as technical organisations and consultative commissions, which act as expert advisers to the Assembly and Council; administrative or executive organisations constituted under certain treaty provisions, or to carry out certain tasks undertaken by the League; and two autonomous organisations—the International Labour Organisation and the Permanent Court of International Justice. In particular there may be mentioned:

The Permanent Court of International Justice, established, under Article 14 of the Covenant, by the Protocol signed at Geneva on December 16, 1920, to which is annexed the Statute of the Court. This Protocol is open also for signature by states not members of the League but mentioned in the Annex to the Covenant, while the Court itself is open to members of the League, states mentioned in the Annex to the Covenant, and conditionally to other states. The Court sits at The Hague, and provides the necessary means for giving effect to Article 14 of the Covenant, *i.e.* the hearing and determination of disputes of an international character likely to affect the peace of the world, and the giving of advisory opinions upon any disputes or questions referred to it by the Council or Assembly;

The International Labour Organisation, founded upon Articles 387–427 of the Treaty of Versailles and the corresponding Articles of other treaties of peace;

The Permanent Advisory Commission on Military, Naval and Air Questions, established under Article 9 of the Covenant;

The Permanent Mandates Commission, established under Article 22 of the Covenant;

The Communications and Transit Organisation, established in connection with Article 23 (*e*) of the Covenant;

The Economic and Financial Commission;

The Health Commission;

The Committee on Intellectual Co-operation;

The Opium Commission ;

The Committee for the Protection of Children and Youth.

These, with others, constitute in the aggregate a great organisation commensurate with the extent and importance of the tasks undertaken by the League in carrying out the obligations ascribed to it by the Covenant and the various treaties which form the basis of its activities.

§ 808. *Rules of Procedure of the Assembly.* [Edition published in January 1929, containing the Amendments adopted at the Second, Third, Fourth and Ninth Ordinary Sessions of the Assembly.]

*Rule 1.*—1. The Assembly shall meet in General Session every year, at the seat of the League of Nations, commencing on the first Monday in September.

2. Sessions may also be held at such times as the Assembly at a previous meeting decides, and at such times as the Council, by a majority vote, decides.

3. If a Member of the League considers a Session to be desirable, it may request the Secretary-General to summon a Special Session of the Assembly. The Secretary-General shall thereupon inform the other Members of the League of the request, and enquire whether they concur in it. If within a period of one month from the date of the communication of the Secretary-General, a majority of the Members concur in the request, a Special Session of the Assembly shall be summoned.

*Rule 2.*—The Sessions of the Assembly shall be held at the seat of the League, or, in exceptional circumstances, at such other place as is designated by the Assembly or by a majority of the Council, or approved by a majority of the Members of the League.

*Rule 3.*—1. The Sessions of the Assembly shall be summoned by the President of the Council, acting through the Secretary-General.

2. The summons shall be addressed to the Members of the League not less than four months before the date fixed for the opening of the Session. In exceptional circumstances, however, the Council, by a majority vote, may sanction a shorter period.

3. Nothing contained in paragraph 2 of this Rule shall affect the provisions, concerning special cases, contained in the Covenant.

*Rule 4.*—1. The agenda shall be drawn up by the Secretary-General with the approval of the President of the Council. The complete agenda shall be circulated as nearly as possible four months before the date fixed for the opening of the Session.

2. The agenda of a General Session shall include :

(a) A report on the work of the Council since the last Session of the Assembly, on the work of the Secretariat, and on the measures taken to execute the decisions of the Assembly ;

(b) All items whose inclusion has been ordered by the Assembly, at a previous Session ;

- (c) All items proposed by the Council ;
- (d) All items proposed by a Member of the League ; and
- (e) The Budget for the next fiscal period, and the report on the accounts of the last fiscal period.

3. Any Member of the League may, at least one month before the date fixed for the opening of the Session, request the inclusion of additional items in the agenda. Such items shall be placed on a supplementary list, which shall be circulated to the Members of the League at least three weeks before the date fixed for the opening of the Session. The Assembly shall decide whether items on the supplementary list shall be included in the agenda of the Session.

4. The Assembly may in exceptional circumstances place additional items on the agenda ; but all consideration of such items shall, unless otherwise ordered by a two-thirds majority of the Assembly, be postponed until four days after they have been placed on the agenda, and until a committee has reported upon them.

5. No proposal for a modification of the allocation of expenses for the time being in force shall be inserted in the Agenda, unless it has been communicated to the Members of the League at least four months before the date fixed for the opening of the Session.

*Rule 5.—1.* Each Member shall communicate to the Secretary-General, if possible before the date fixed for the opening of the Session, the names of its Representatives, of whom there shall be not more than three. The names of Substitute-Representatives may be added.

2. Each Representative shall, as soon as possible, and preferably before the opening of the Session, present his credentials to the Secretary-General.

3. A Committee of eight members for the examination of the credentials shall be elected by the Assembly by secret ballot. The committee shall report without delay.

4. Any Representative to whose admission objection has been made shall sit provisionally with the same rights as other Representatives, unless the Assembly decides otherwise.

*Rule 6.—1.* In addition to the Substitute-Representatives mentioned in paragraph 1 of Rule 5, the Representatives of a Member of the League attending the Assembly, acting together as a Delegation, may appoint substitutes. Any such appointment shall be communicated in writing to the President.

2. A Substitute-Representative appointed by a Member of the League may take the place of a Representative without nomination by the Representatives.

3. A Substitute-Representative or Substitute may take the place of a Representative who is absent from a meeting of the Assembly, or is temporarily prevented from taking part in its deliberations, but if the Representative is present at the meeting the Substitute-Representative or Substitute is only entitled to assist him.

4. A Delegation may appoint for service on a committee a

deputy or technical adviser other than those referred to in the above paragraphs of this Rule ; but a deputy or adviser so appointed shall not be eligible for appointment as Chairman or Rapporteur, or for a seat in the Assembly.

*Rule 7.*—1. The officers of the Assembly shall consist of a President and of six Vice-Presidents, together with the Chairmen of the main Committees of the Assembly, who shall be *ex-officio* Vice-Presidents of the Assembly. These officers shall form the General Committee.

2. The President shall be elected at the beginning of each Session.

3. Until the election of the President, the President of the Council shall act as President of the Assembly.

4. The election of the Vice-Presidents shall take place at one of the early meetings of the Session.

*Rule 8.*—1. The President shall announce the opening, suspension and adjournment of the meetings of the Assembly, direct the work of the Assembly, ensure the observance of the Rules of Procedure, accord the right to address the Assembly, declare the debates to be closed, put questions to the vote, and announce the result of the voting.

2. In the general direction of the work of the Assembly, in the constitution of such committees as the Assembly decides to create, in deciding on the communications to be made to the Assembly, in the framing of the agenda for each meeting, and in the determination of the order of priority for its various items, the President shall be assisted by the General Committee.

*Rule 9.*—1. The Secretary-General shall be responsible for the organisation of the Secretariat of the Assembly and of the Secretariat of any committees set up by the Assembly.

2. The Secretary-General may be assisted or replaced at the meetings of the Assembly by a deputy or deputies. The Secretary-General, or one of his deputies, may at any time, on the invitation of the President, bring before the Assembly reports concerning any question which is being considered by the Assembly, and may be invited by the President to make verbal communications concerning any question under consideration.

*Rule 10.*—1. It shall be the duty of the Secretariat, *inter alia*, to receive, print, circulate and translate documents, reports and resolutions ; to translate speeches made at the meeting ; to draft, print and circulate the Minutes of the Session ; to have the custody and proper preservation of the documents in the archives of the Assembly ; to publish the reports of the meetings, and, generally, to perform all other work which the Assembly thinks fit to entrust to it.

2. All documents emanating from the Assembly shall be circulated to the Governments of the Members of the League.

*Rule 11.*—1. The public shall be admitted to the plenary meetings of the Assembly, by cards distributed by the Secretary-General.

2. The Assembly may decide that particular meetings shall be private.

3. All decisions of the Assembly upon items on the agenda, which have been taken at a private meeting, shall be announced at a public meeting of the Assembly.

*Rule 12.*—A list of the attendance at each meeting of the Assembly shall be kept by the Secretariat.

*Rule 13.*—At the beginning of each meeting the President shall present to the Assembly all communications addressed to the Assembly or to the League, the importance of which appears to him to warrant such action.

*Rule 14.*—1. The Assembly shall establish such committees as it thinks fit, for the consideration of the items on the agenda. Items of the same nature will be referred to the same committee.

2. The Assembly shall not decide items on the agenda in full meeting until the report of a committee upon them has been presented and circulated, unless the Assembly itself, by a two-thirds majority, determines otherwise.

Decisions involving expenditure shall be subject to the rules laid down in the Regulations for the Financial Administration of the League of Nations.

Reports by a committee involving the expenditure of money must indicate whether the expenditure will constitute part of the general expenses of the League or whether it will be recovered from the Members of the League particularly concerned.

No resolution involving expenditure shall in any case be voted by the Assembly before the Finance Committee shall have expressed its opinion on the advisability of the proposed expenditure from the point of view of general budgetary resources.

3. Each Delegation may designate one member, and may nominate technical advisers, for each committee.

4. Each committee shall appoint its Chairman and Rapporteur.

5. Each committee may appoint sub-committees, which shall elect their own officers.

6. Each committee shall meet in private unless it decides otherwise. It shall keep a Register of its discussions, and Minutes, which shall be published at the earliest possible date, but not until they have been approved by the committee. They may at any time be consulted by any Member of the Assembly.

7. Every Representative shall have the right to place before any committee any communication which he considers should be made to it, but no Representative may, without special leave from the Chairman, speak at a meeting of any committee of which he is not a member.

8. The Secretary-General or his deputies may make to any committee or sub-committee any report or verbal communication which he or they may consider desirable.

*Rule 15.*—1. No Representative may address the Assembly without having previously obtained the permission of the President.

2. Speakers shall be called upon in the order in which they have signified their desire to speak. The Chairman and the Rapporteur of a committee may be accorded precedence for the purpose of defending or explaining the conclusions arrived at by their committee. The same principle shall apply to any Member of the Council.

3. The President may call a speaker to order if his remarks are not relevant to the subject under discussion. If necessary, he may direct the speaker to resume his seat.

4. When a motion is under discussion, a Representative may rise to a point of order, and such point of order shall be immediately decided by the President in accordance with the Rules of Procedure.

5. The Assembly may limit the time allowed to each speaker.

*Rule 16.*—1. Speeches in French shall be summarised in English, and *vice-versa*, by an interpreter belonging to the Secretariat.

2. A Representative speaking in another language shall provide for the translation of his speech into one of these two languages.

3. All documents, resolutions and reports circulated by the President or the Secretariat shall be rendered in both French and English.

4. Any Representative may have documents circulated in a language other than French or English, but the Secretariat will not be responsible for their translation or printing.

5. Any Member of the League, or any group of Members, may require that all documents and publications of the League shall be regularly translated into, and printed and circulated in, a language other than French and English, but shall in such case defray all the necessary expenses.

*Rule 17.*—1. Resolutions, amendments and motions must be introduced in writing and handed to the President. The President shall cause copies to be distributed to the Representatives.

2. As a general rule, no proposal shall be discussed or put to the vote at any meeting of the Assembly unless copies of it have been circulated to all Representatives not later than the day preceding the meeting.

3. The President may, however, permit the discussion and consideration of amendments, or of motions as to procedure, without previous circulation of copies.

*Rule 18.*—1. During the discussion of any question, any Representative may move the previous question or the adjournment. Any such motion shall have priority in the debate. In addition to the proposer of the motion, two Representatives may speak in favour of, and two against, the motion.

2. Parts of a proposal shall be voted on separately, if a Representative request that the proposal be divided.

3. A Representative may at any time move the closure of the debate, whether any other Representative has signified his wish to speak or not. If application is made for permission to speak against the closure, it may be accorded to not more than two speakers.

4. The President shall take the sense of the Assembly on a motion for closure. If the Assembly decides in favour of the closure, the President shall declare the closure of the debate.

5. When a number of proposals are before the Assembly, the proposal furthest removed in substance from the principal one shall be voted on first.

6. If an amendment striking out part of a proposal is moved, the Assembly shall first vote on whether the words in question shall stand part of the proposal. If the decision is in the negative, the amendment shall then be put to the vote.

7. When an amendment adds to a proposal it shall be voted on first, and if it is adopted the amended proposal shall then be voted on.

*Rule 19.*—1. Except where otherwise expressly provided in the Covenant or by the terms of a treaty, decisions of the Assembly shall be taken by a unanimous vote of the Members of the League represented at the meeting.

2. All matters of procedure at a meeting of the Assembly, including the appointment of committees to investigate particular matters, shall be decided by a majority of the Members of the League represented at the meeting.

3. All decisions taken in virtue of these Rules shall be considered as matters of procedure.

4. A majority decision requires the affirmative votes of more than half of the Members of the League represented at the meeting.

5. For the purposes of this Rule, Representatives who abstain from voting shall be considered as not present.

*Rule 20.*—The Assembly shall vote by "Appel Nominal," except when the Members of the League represented at the meeting agree that the method of voting shall be by heads of Delegations rising in their seats, and except in the cases provided for in Rule 21. The "Appel Nominal" shall be taken in one of the following manners as the Assembly may decide :

- (a) The name of each Delegation shall be called, and one of its members shall reply "Yes," "No," or "Not voting." The result of the vote shall be recorded and announced to the Assembly ;

or

- (b) The Delegation of each Member of the League represented at the meeting shall be provided with two voting tickets, on which the name of the country is written, one red and one blue, the former being "Aye," the latter "No." The voting tickets shall be deposited in an urn placed near the President's platform. When all the votes have been collected, the President shall declare the ballot closed, and the General Committee shall proceed to count the votes. The individual votes shall be communicated to the Assembly and the result shall be announced by the President.

*Rule 21.—1.* All decisions relating to individuals shall be taken by a secret ballot.

2. If, when one person only is to be elected, no one person obtains at the first ballot an absolute majority of votes, an entirely new ballot shall be taken ; but on this occasion the voting shall be confined to the two candidates who obtained the largest number of votes at the first ballot. If there is at this ballot an equality of votes for the two candidates, the elder candidate shall be declared elected.

3. When a number of elective places of the same nature are to be filled at one time, those persons who obtain an absolute majority at the first ballot shall be elected. If the number of persons obtaining such majority is less than the number of persons to be elected, there shall be a second ballot to fill the remaining places, the voting being restricted to the unsuccessful candidates who obtained the greatest number of votes at the first ballot, not more than double in number the places remaining to be filled. Those candidates, to the number required to be elected, who receive the greatest number of votes at the second ballot shall be declared elected.

*Rule 22.—*In case of equality in any voting other than that referred to in Rule 21, in which a majority is required, a second vote shall be taken in the course of the next meeting ; this meeting shall be held within 48 hours from the date on which the first vote was taken, and it shall be expressly mentioned on the agenda that a second vote will be taken on the matter in question. Unless there is at this subsequent meeting a majority in favour of the proposal, it shall be considered as lost.

*Rule 22a.—1.* The Members whose representatives are to sit on the Council as non-permanent Members of that body shall be selected by the Assembly by secret ballot.

2. Where several seats are to be filled, the election shall be made by voting a list of names. Any ballot-paper containing more names than there are seats to be filled shall be null and void.

3. No Members shall be elected at the first or at the second ballot unless it has obtained at least the absolute majority of the votes. If, after two ballots, there still remain seats to be filled, a third ballot shall be held upon a list consisting of the candidates which obtained most votes at the second ballot, up to a number double that of the seats still to be filled, and those Members shall be elected which obtain the greatest number of votes.

4. If two or more Members obtain the same number of votes and there is not a seat available for each, a special ballot shall be held between them ; if they again obtain an equal number of votes, the President shall decide between them by drawing lots.

*Rule 23.—1.* The President may declare a meeting to be adjourned or suspended, if a proposal for adjournment or suspension made by him does not meet with objection from the Assembly.

2. The President shall declare an adjournment or suspension of the meeting upon a vote to this effect by the Assembly.

*Rule 24.*—The General Committee, in cases where it deems it necessary, may revise the resolutions adopted by the Assembly, changing their form but not their substance. Any such changes shall be reported to the Assembly.

*Rule 25.*—The verbatim report of each meeting shall be drawn up by the Secretariat and submitted to the Assembly after approval by the President.

*Rule 26.*—The resolutions adopted by the Assembly shall be circulated by the Secretary-General to the Members of the League within fifteen days after the termination of the Session.

*Rule 27.*—These Rules of Procedure shall apply to the proceedings of committees of the Assembly.

*Rule 28.*—These Rules of Procedure may be altered by a decision of the Assembly ; but no such alteration shall be made except upon a majority vote of the Assembly, taken after a committee has reported on the proposed alteration.

#### ANNEX I.

*Recommendations as to the Arrangements for the Debates in the Assembly on the Annual Report by the Council.*

[Communicated by the General Committee to the Delegates to the Third Ordinary Session of the Assembly on September 29th, 1922.]

The General Committee, in accordance with the desire expressed by the Assembly, has carefully investigated the proposals made by the President with regard to the arrangements for the debates in the Assembly on the report by the Council. The General Committee unanimously recognises the utility of these proposals and has adopted the following recommendations, which may perhaps serve for guidance in the procedure of future Assemblies and help their Presidents in the exercise of the powers conferred upon them in pursuance of Articles 8 and 15 of the Rules of Procedure :

1. The report by the Council on its work of the year shall be communicated to the Assembly at the beginning of the session, and as a general rule it shall constitute the first subject on the agenda after the organisation of the Assembly has been completed.

2. The report by the Council shall be submitted for debate in the Assembly, to be opened with a general discussion, which may be followed by consideration of particular subjects dealt with in the report or arising out of it.

3. The Delegates shall be invited to inform the President before the beginning of the debate, or as soon thereafter as possible, whether they desire to participate, indicating at the same time their wishes as to engaging in the general debate, or more particularly in the discussion of specific matters covered by the Council's report ; they should be invited to state also the subjects with which they wish to deal specially in the specific discussion.

4. The President will propose to the Assembly, as early as

possible, the subjects to be covered in the specific discussion following the general debate, arranging to have speakers on the same topic heard in succession. The Delegates will be invited to limit their speeches in the special debates, as far as possible, to the special topics under discussion at the time. It is in no sense inconsistent with the present Recommendations that Delegates taking part in the general discussion should on that occasion refer to subjects on which a specific discussion will take place.

(Annex II.—Procedure of Adoption of the Budget at Plenary Meetings of the Assembly.)

(Annex III.—Extract from the Regulations for the Financial Administration of the League of Nations.)

*Rules dealing with the Election of the Nine Non-Permanent Members of the Council. [Resolution adopted by the Assembly at its Meeting held on September 15, 1926.]*

The Assembly, acting in virtue of Article 4 of the Covenant, decides as follows :

*Article 1.*—The Assembly shall each year, in the course of its ordinary session, elect three non-permanent Members of the Council. They shall be elected for a term commencing immediately on their election and ending on the day of the elections held three years later by the Assembly.

Should a non-permanent Member cease to belong to the Council before its term of office expires, its seat shall be filled by a by-election held separately at the session following the occurrence of the vacancy. The term of office of the Member so elected shall end at the date at which the term of office of the Member whose place it takes would have expired.

*Article 2.*—A retiring member may not be re-elected during the period between the expiration of its term of office and the third election in ordinary session held thereafter unless the Assembly, either on the expiration of the Member's term of office or in the course of the said period of three years, shall, by a majority of two-thirds of the votes cast, previously have decided that such Member is re-eligible.

The Assembly shall pronounce separately, by secret ballot, upon each request for re-eligibility. The number of votes cast shall be determined by the total number of voting tickets deposited, deducting blank or spoilt votes.

The Assembly may not decide upon the re-eligibility of a Member except upon a request in writing made by the Member itself. The request must be handed to the President of the Assembly not later than the day before the date fixed for the election ; it shall be submitted to the Assembly, which shall pronounce upon it without referring it to a committee and without debate.

The number of Members re-elected in consequence of having been previously declared re-eligible shall be restricted so as to prevent the Council from containing at the same time more than

three Members thus elected. If the result of the ballot infringes this restriction to three Members, those of the Members affected which have received the smallest number of votes shall not be considered to have been elected.

*Article 3.*—Notwithstanding the above provisions, the Assembly may at any time by a two-thirds majority decide to proceed, in application of Article 4 of the Covenant, to a new election of all the non-permanent Members of the Council. In this case the Assembly shall determine the rules applicable to the new election.

*Article 4.—Temporary Provisions.*—1. In 1926, the nine non-permanent Members of the Council shall be elected by the Assembly, three for a term of three years, three for a term of two years, and three for a term of one year. The procedure of the election shall be determined by the General Committee of the Assembly.

2. Of the nine Members thus elected in 1926, a maximum of three may be immediately declared re-eligible by a decision of the Assembly taken by a special vote by secret ballot, a separate ballot being held for each Member, and adopted by a majority of two-thirds of the number of votes cast. Immediately after the announcement of the results of the election, the Assembly shall decide upon the requests for re-eligibility which have been presented. Should the Assembly have before it more than three requests for re-eligibility, the three candidates having received the largest number of votes, in excess of two-thirds of the votes cast, shall alone be declared re-eligible.

3. The according in advance in 1926 to one, two or three Members elected at that date of the quality of re-eligibility shall not affect the Assembly's right to exercise the power given by Article 2 in the years 1927 and 1928 in favour of other non-permanent Members retiring from the Council in those years. It is, however, understood that, if three Members already possess the quality of re-eligibility, the Assembly will only exercise this power in very exceptional cases.

## CHAPTER XXX

### THE LEAGUE OF NATIONS :—MANDATES, TREATIES, DIPLOMATIC PRIVILEGES

#### MANDATED TERRITORIES

§ 809. AMONG the earliest of the tasks undertaken by the League was the approval of the mandates contemplated by Article 22 of the Covenant for the administration of the territories there described, and the setting up of a permanent commission to receive and examine the annual reports of the mandatories, as also provided for.

§ 810. These territories form three distinct groups, as set forth in paragraphs 4, 5 and 6 of Article 22, and the mandates issued for their administration on behalf of the League are usually referred to as "A," "B" and "C" mandates respectively.

§ 811. Mandates were issued for the following territories, and accepted by the countries named :

"A" Mandates :

Palestine—Great Britain.  
Syria and the Lebanon—France.

"B" Mandates :

Cameroons (British sphere)—Great Britain.  
Cameroons (French sphere)—France.  
Togoland (British sphere)—Great Britain.  
Togoland (French sphere)—France.  
Tanganyika—Great Britain.  
Ruanda-Urundi—Belgium.

"C" Mandates :

South-West Africa—Union of South Africa.  
Western Samoa—New Zealand.  
Nauru—British Empire (Great Britain, Australia, New Zealand).  
Other Pacific Islands and Territories south of the Equator—Australia.  
Pacific Islands north of the Equator—Japan.

§ 812. It was originally contemplated that Iraq should form the subject of a mandate under Article 22 (4) of the Covenant, to be issued to Great Britain. No actual mandate was, however issued, but a treaty of alliance was concluded between Great Britain and Iraq in 1922, which, with a further Agreement of 1923, was accepted by the Council as giving effect to Article 22 of the Covenant. On June 30, 1930, a new Treaty was signed between Great Britain and Iraq, and was ratified on January 26, 1931, on the basis of an alliance between two independent states, to become operative as soon as Iraq has become admitted to membership of the League.<sup>1</sup>

§ 813. The mandate for Palestine is applicable to Transjordan, with the exception of the provisions regarding the establishment of a national home for the Jewish people. But while action thereunder is taken in Palestine by the Administration of Palestine, an Agreement was concluded on February 20, 1928, between His Britannic Majesty and the Amir of Transjordan, setting up an independent and constitutional government in Transjordan, the mandatory being represented there by a British Resident, subordinate to the High Commissioner for Palestine and Transjordan.<sup>2</sup>

§ 814. Several agreements have since been concluded by the mandatories, and approved by the League, regarding the definition of the boundaries of the respective mandated territories. (See, *e.g.*, § 101.)

§ 815. In the case of the "A" and "B" mandated territories, equal opportunities for trade and commerce are guaranteed to other members of the League. The United States having claimed similar rights, treaty arrangements have been concluded by that country with the mandatories to the same effect.

§ 816. Nationality Laws have been promulgated in Iraq (October 9, 1924), Palestine (July 24, 1925), Transjordan (June 1, 1928), Syria (January 19, 1925), and the Lebanon (January 19, 1925). In South-West Africa persons of German origin have been locally naturalised under an Act of 1924 of the Union of South Africa, which allowed them the right of declining the British nationality offered, but, by an understanding with Germany in 1923, persons so naturalised also retain German nationality.

§ 817. It has been held that British subjects who may become naturalised as Palestinian citizens under the Palestinian Citizenship Order in Council, 1925, do not thereby cease to be British subjects.

<sup>1</sup> Dominions Office and Colonial Office List (1931), 516.

<sup>2</sup> *Ibid.*, 524.

## TREATIES

§ 818. Under Article 18 of the Covenant of the League, the obligation rests upon every member of the League to register with the secretariat forthwith for publication every treaty or international engagement entered into by it ; no such treaty or international engagement to be binding until so registered.

§ 819. This Article is intended to cover all treaty arrangements, however designated, and all international engagements or acts establishing legal obligations between one country and another or others.

§ 820. Publication takes place in the League of Nations Treaty Series, and where the instrument has no French or English text, translations into these languages are appended.

§ 821. In the case of bilateral treaties between two members of the League, both, as a rule, effect registration. Where one party alone is a member, registration is effected by it. Where treaties are concluded under the auspices of the League itself, the Secretariat automatically registers. Occasionally countries which are not members of the League have registered. The United States Government, as a matter of courtesy, furnishes the League with copies of treaties concluded by it, but not for registration.

All such events as ratification, accession, denunciation, etc., are also notified to the secretariat, and are published in the League Treaty Series.

§ 822. With a view of removing some uncertainties felt at the outset, the British Government, on September 20, 1920, suggested, in a circular to other states members of the League, the adoption of the following procedure :

(1) All treaties or other binding engagements between two Powers to be notified for registration by both parties, the treaty to have binding force from the date of the first registration.

(2) All treaties or other agreements between several Powers to be notified for registration by the government of the Power in whose country the treaty is signed and ratified, on behalf of the signatories ; it will therefore devolve upon the headquarters government to make the required notification.

(3) All treaties or other engagements intended for registration to be communicated as far as possible to the secretariat of the League, in their completed form, *i.e.*, the form in which, according to their terms, they are completed, whether by signature only, exchange of notes or by ratification.

These proposals appear to have been generally accepted at the time as a basis to govern the procedure to be followed.

§ 823. Of the British Dominions which are members of the League, Canada, Australia, the Union of South Africa and the Irish Free State notify to the secretariat for registration treaty engagements concluded by them ; those concluded by New Zealand are at present notified for registration by H.M. Government in the United Kingdom. Agreements between Great Britain and Iraq are notified for registration by Great Britain ; those between territories for which Great Britain holds a mandate and foreign governments are communicated to the Permanent Mandates Commission.

§ 824. There are instances where, through inadvertence or otherwise, a state has failed to effect registration in conformity with Article 18 of the Covenant, but, so far as is known, no case has occurred in which the validity of a treaty instrument has been impugned on this ground.

§ 825. Since the League of Nations was established a great number of treaties have been signed under its auspices in furtherance of aims and purposes for which the League was created, and many of these are international compacts of the highest importance, often open to participation or accession by states not members of the League. A recent list issued by the League shows the following general arrangements which have been so concluded :

Covenant of the League of Nations.

Protocol of Amendments to Articles 16 and 26 : Geneva, October 5, 1921.

Protocols of Amendment to Article 16 : Geneva, September 27, 1924 : September 21, 1925.

Permanent Court of International Justice.

Protocol of Signature and Optional Clause : Geneva, December 16, 1920.

Protocol, Revision of Statute : Geneva, September 14, 1929.

Protocol, Accession of the United States : Geneva, September 14, 1929.

Communications and Transit.

Convention and Statute, Freedom of Transit : Barcelona, April 20, 1921.

Convention, Statute and Protocol, Navigable Waterways of International Concern : Barcelona, April 20, 1921.

Declaration, Right to Flag of States having no Sea-Coast : Barcelona, April 20, 1921.

Convention, Statute and Protocol, International Régime of Railways : Geneva, December 9, 1923.

Convention and Statute, International Régime of Maritime Ports : Geneva, December 9, 1923.

- Convention, Transmission in Transit of Electric Power :  
Geneva, December 9, 1923.
- Convention, Development of Hydraulic Power : Geneva,  
December 9, 1923.
- Convention, Measurement of Vessels in Inland Navigation :  
Paris, November 27, 1925.
- Traffic in Women and Children.  
Convention : Geneva, September 30, 1921.
- Obscene Publications.  
Convention : Geneva, September 12, 1923.
- Arbitration Clauses in Commercial Matters.  
Protocol : Geneva, September 24, 1923.  
Convention : Geneva, September 26, 1927.
- Simplification of Customs Formalities.  
Convention and Protocol : Geneva, November 3, 1923.
- Traffic in Opium and other Dangerous Drugs.  
Agreement and Protocol : Geneva, February 11, 1925.  
Convention and Protocol : Geneva, February 19, 1925.  
Convention and Protocol, Manufacture and Distribution :  
Geneva, July 13, 1931.
- Trade in Arms, Ammunition and Implements of War.  
Convention : Geneva, June 17, 1925.  
Declaration, Territory of Ifni : Geneva, June 17, 1925.  
Protocol, Prohibition of Use in War of Asphyxiating, etc.,  
Gases, and Bacteriological Methods of Warfare : Geneva,  
June 17, 1925.
- Slavery.  
Convention : Geneva, September 25, 1926.
- International Relief Union.  
Convention and Statute : Geneva, July 12, 1927.
- Abolition of Import and Export Restrictions.  
Convention, Agreement and Protocols : Geneva, November 8, 1927-July 11, 1928.
- Pacific Settlement of International Disputes.  
General Act : Geneva, September 26, 1928.
- Economic Statistics.  
Convention and Protocol : Geneva, December 14, 1928.
- Counterfeiting Currency.  
Convention and Protocols : Geneva, April 20, 1929.
- Transit Cards for Emigrants.  
Agreement : Geneva, June 14, 1929.
- Refugees.  
Convention (Greece and Refugees Settlement Commission) :  
Geneva, January 24, 1930.

Concerted Economic Action.

Commercial Convention and Protocol : Geneva, March 24, 1930.

Codification of International Law.

Convention, Nationality Laws ; Protocol, Double Nationality ; Protocols, Statelessness : The Hague, April 12, 1930.

Bills of Exchange, Promissory Notes and Cheques.

Conventions : Geneva, June 7, 1930.

Conventions : Geneva, March 19, 1931.

Financial Assistance.

Convention : Geneva, October 2, 1930.

Buoyage and Lighting of Coasts.

Agreements : Lisbon, October 23, 1930.

Unification of River Law.

Conventions, Collisions, Registration, etc., Flag : Geneva, December 9, 1930.

Road Traffic.

Convention, Signals, Taxation, etc. : Geneva, March 28-30, 1931.

International Agricultural Mortgage Credit.

Convention, Geneva, May 21, 1931.

Regulation of Whaling.

Convention, Geneva, September 24, 1931.

§ 826. International compacts concluded under the auspices of the League vary to some extent in point of form from the traditional practice. The term Treaty does not appear in the above list, even for compacts of the highest importance. On the other hand, Protocol may be used to denote a treaty instrument of a high order, such as that establishing the Permanent Court of International Justice ; or to constitute a Declaration by Governments, as in the case of the Protocol for the prohibition of the use in war of asphyxiating gases, etc. ; or, again, in its ordinary sense as a minor or supplementary instrument. Convention is the term most commonly used for League compacts, either for compacts between heads of states or for compacts between governments ; while a similar use is made of the term Agreement. If these terms are to preserve their original significance, and not to become merely interchangeable counters, a return to former practice would seem desirable.

§ 827. Originally conventions concluded under the auspices of the League began with a recital of the names of the states members of the League, which, considering some purpose desirable, had decided to conclude a convention for its attain-

ment ; this statement being followed by a list of the heads of those states with the names of the plenipotentiaries appointed by those heads. This novel form being found unsuitable, it was replaced, at the suggestion of the British Government, by the customary form under which compacts which are concluded between heads of states are concluded in the name of the latter.

§ 828. Other changes, which have doubtless been prompted by the desire to secure in advance, or to render easier of attainment, the participation of as many states members of the League as possible, are :

The system of draft conventions respecting Labour Organisation, under Article 405 of the Treaty of Versailles and the corresponding Articles of other Treaties of Peace ; these conventions are not signed, but their formal ratification is notified to the Secretary-General of the League. In Great Britain such ratification takes the form of the issue of an Order of Council ;

A system under which a state may accede to a convention *ad referendum*, or on the understanding that such accession requires to be perfected by subsequent ratification ;

A method by which a treaty arrangement may remain open for signature indefinitely, as in the case of the Protocol establishing the Permanent Court of International Justice ;

A method under which a treaty may not provide for signature but only for accession, to an extent set out therein, and subject, it may be, to certain specified reservations, as in the case of the General Act of 1928 for the Pacific Settlement of International Disputes.

## DIPLOMATIC PRIVILEGES

§ 829. The immunities of diplomatic agents formed the subject of Chapter XVI, where it was mentioned (§ 366) that diplomatic immunities and privileges have been extended by treaty provisions to certain other officials and persons.

§ 830. Article 7 (4) of the Covenant of the League of Nations declares that (1) representatives of the Members of the League, and (2) officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities. This provision, accepted by all members of the League, appears therefore to apply throughout the territories of all the members of the League.

§ 831. As regards (1) the term Representatives of the

Members of the League relates primarily to representatives who may be attending the meetings of the Assembly and Council ; and it may seemingly apply also to representatives who attend such international conferences as are convoked under the auspices of the League for the discussion of matters of international concern (§ 365). It would appear to have a more continued application to certain representatives who are permanently established at Geneva, the seat of the League ; and it might be held to apply to representatives on the various organisations, commissions and consultative bodies within the framework of the League ; or to some of them. The privilege might further be deemed to extend to the suites of representatives, on the analogy of the principles governing the suites of diplomatic agents ; though whether it would extend in equal measure to representatives, or, it may be, to persons composing their suites, who are nationals of the country in which they are present while engaged on the business of the League, seems doubtful.

§ 832. As regards (2) the term Officials of the League relates primarily to officials engaged on the business of the League at its headquarters in Switzerland, but it doubtless applies also to officials delegated by the League to perform functions in other countries members of the League ; or possibly in other countries not members of the League, by agreement with the latter. It might be held to relate to all officials without exception, or only to some, according to the nature of their functions. Whether the privilege would extend in equal measure to officials who were nationals of the country in which they were present when engaged on the business of the League seems again uncertain.

§ 833. Article 7 (5) of the Covenant declares that the buildings and other property occupied by the League or its officials or by representatives attending its meetings shall be inviolable. This provision relates primarily to buildings and other property in Switzerland where the League is established ; but it may also relate to buildings or other property occupied by its officials in other countries while performing functions on behalf of the League ; and, on the analogy of the practice regarding diplomatic agents, it might perhaps be deemed to extend beyond buildings or other property officially occupied to those in which the representatives or officials, or, it may be, persons composing their suites, are for the time being residing ; or at any rate to some extent.

§ 834. On these various points there is some diversity of opinion. An excellent exposition of the subject is given in a

recent work by M. J. Secretan.<sup>1</sup> It is without doubt necessary, and may be readily agreed, that a wide immunity and privilege should attach to those taking part in the international work of the League, and to those entrusted with the fulfilment of various functions on its behalf. But until, in process of time, cases arise for settlement, and rules of practice are more fully developed, some uncertainty must seemingly exist as to the precise extent of the application to be given to the provisions of Article 7 (4) and (5) of the Covenant, and the limitations, if any, to be assigned to them. Reference has already been made in § 367 to the view expressed by Sir C. Hurst as regards the categories of persons now engaged on international work who should be free from subjection to the local jurisdiction, viz., that the final decision rests with the Executive Government and not with the courts as to what individuals are entitled to this privilege.

§ 835. Meanwhile the members of the Commission for the Government of the Saar Territory, with the Secretary-General and the Assistant Secretary-General of the Commission, are definitely accorded diplomatic privileges and immunities, as is also the High Commissioner of the League for the Free City of Danzig with his suite, official and non-official. And in Switzerland, where the League has its seat, and where consequently the matter is of primary importance, an Agreement reached with the Swiss Government in 1926, as constituting a *modus vivendi*, is as follows :

Geneva,  
September 18, 1926.

COMMUNICATIONS FROM THE SWISS FEDERAL COUNCIL CONCERNING  
THE RÉGIME OF DIPLOMATIC IMMUNITY OF THE STAFF OF THE  
LEAGUE OF NATIONS.

*Note by the Secretary-General*

The Secretary-General has the honour to submit to the Council the text of a new *modus vivendi* concerning the diplomatic immunities of the Staff of the League Organisations at Geneva. This text has been accepted both by the Federal Government and by the Secretary-General and the Director of the International Labour Office.

1. The Swiss Federal Government recognises that the League of Nations, which possesses international personality and legal capacity, cannot, in principle, according to the rules of international law, be sued before the Swiss Courts without its express consent.

<sup>1</sup> *Les Immunités Diplomatiques des Représentants des États Membres et des Agents de la Société des Nations* (1928).

2. The premises in which the services of the League of Nations (Secretariat and International Labour Office) are installed (in the case of buildings entirely occupied by League offices, the buildings themselves, together with gardens and annexes) are inviolable, that is to say, no agent of the public authority may enter them, in the exercise of his duties, without the consent of the Secretariat or of the International Labour Office.

3. The archives of the League of Nations are inviolable.

4. The Secretary-General of the League of Nations and the Director of the International Labour Office are entitled to use couriers for the reception and dispatch of official correspondence with the Members of the League of Nations and its agents outside Switzerland.

5. Customs exemption is granted to the League of Nations in respect of all objects, whether intended to form an integral part of a building or not, which are the absolute property of the League and are destined for its exclusive use.

6. The League of Nations shall enjoy complete fiscal exemption in respect of its bank assets (current and deposit accounts) and its securities.

In particular, it shall be exempted from the stamp duty on coupons instituted by the Federal Law of June 25, 1921. The exemption shall be effected by the repayment to the League of Nations of the duty levied on its assets.

7. Subject to the provisions of Article 9 below, officials of the Organisations of the League of Nations at Geneva, who are members of the Staff of the first category or extra-territorial Staff, shall enjoy immunity from civil and criminal jurisdiction in Switzerland unless such immunity is waived by a decision of the Secretary-General or of the Director of the International Labour Office.

The members of the Staff of the second category shall enjoy the same privileges in respect of acts performed by them in their official capacity and within the limits of their functions. They shall remain subject to local laws and jurisdiction in respect of acts performed by them in their private capacity.

It is clearly understood, however, that the Organisations of the League of Nations at Geneva will endeavour to facilitate the proper administration of justice and execution of police regulations at Geneva.

8. Officials of the Organisations of the League of Nations who are members of the Staff of the first category enjoy fiscal immunity. Consequently they are exempted, in accordance with international practice, from all direct taxes, with the exception of the charges attaching to immovable property (the land tax). They are liable for the payment of indirect taxes and charges. The expression "direct taxes" shall be understood to mean taxes which are levied directly upon the taxpayer. "Charges"—whatever the expression employed in the regulations governing the matter may be—shall only be understood to mean payments in return for the rendering

of a special and definite service by the administration to the person who pays them, together with those which are paid in order to cover special expenditure necessitated by an act of the taxpayer.

Members of the Staff of the second category are exempted :

- (1) from the tax ("taxe") on salary (revenu professionnel) ;
- (2) from the tax ("taxe") on capital (fortune) or income (revenu) ;
- (3) from the emergency federal war tax.<sup>1</sup>

9. In the case of members of the Staff of Swiss nationality the following exceptions are instituted :

- (1) Officials of Swiss nationality may not be sued before the local courts in respect of acts performed by them in their official capacity and within the limits of their official duties.
- (2) The salaries paid to them by the League of Nations are exempted from cantonal and municipal direct taxes.

10. The customs examination of packages, etc., addressed to the officials of the Organisations of the League of Nations shall be effected in accordance with the regulations ("prescriptions"), the text of which was communicated to the Secretary-General of the League by the Head of the Federal Political Department on January 10th, 1926.

11. If the exigencies of training and the interests of the country permit, exemptions from or postponements of military service shall be granted to officials of Swiss nationality incorporated in the Federal Army in cases in which their compliance with an order calling them up for military service would be likely seriously to interfere with the normal working of the services of the League.

12. Correspondence relating to the application of the rules of the *modus vivendi* between the Organisations of the League of Nations and the Swiss authorities shall be exchanged through the intermediary of the Federal Political Department, except in cases in which some other procedure has been prescribed.

13. The present provisions complete or summarise but do not abrogate the rules previously established by an exchange of notes between the Organisations of the League of Nations and the Federal Political Department.

14. As long as the present arrangement remains in force, the examination of the legal arguments set forth in the notes of February 24th and March 5th, 1926, shall not be proceeded with.

The above rules of the *modus vivendi* can only be modified by agreement between the Organisations of the League of Nations and the Federal Political Department. If, however, an agreement cannot be reached, it shall always be open to the Federal Government or the Organisations of the League of Nations to denounce the whole or part of the rules of the *modus vivendi*. In this case the rules mentioned in the denouncement shall remain in force for one year from the date of such denouncement.

<sup>1</sup> As regards the federal war tax, see annexed note.

## NOTE CONCERNING THE FEDERAL WAR TAX

*Members of the Staff of Swiss nationality*

As regards the exemption from the federal war tax granted to members of the Staff of Swiss nationality, the present position is as follows :

A letter of July 17, 1926, from the Federal Political Department shows that the Federal Council is prepared to exempt from this tax the salary of officials of Swiss nationality until the expiration of the contracts of service which the persons concerned at present hold and which make provision for a salary payable free of taxes. By means of this temporary exemption, the Federal Council desires to prevent the possibility of the payment of the federal war tax resulting, through the operation of the clauses of the contracts in force, in imposing, even indirectly, any charge upon the budget of the League of Nations. In view of the character and special object of the federal war tax and certain considerations of principle, the Federal Council does not feel able to contemplate permanent exemption.

As the Secretary-General has accepted the arrangement proposed by the Federal Council as regards the contracts at present in force but considers it necessary to give further consideration to the various legal and administrative difficulties which might arise from differentiations in contracts, a final solution has not up to now been reached.

§ 836. Certain cases which have come before the Swiss tribunals are the following :

In 1926, in a civil action before the Tribunal de 1<sup>ère</sup> Instance at Geneva, brought against a permanent delegate to the League of Nations, the defendant claimed diplomatic immunity, and the court declared itself incompetent. But in 1927, on the institution of fresh proceedings, after his appointment as chargé d'affaires at Cairo, the Court declared itself competent to deal with the case under Swiss law, holding that his diplomatic immunity had terminated before the institution of such proceedings, and that such diplomatic immunity as he might possess at Cairo in no way covered him in Switzerland.<sup>1</sup>

In 1927, in an action for divorce brought before the Tribunal de 1<sup>ère</sup> Instance at Geneva, by the wife of a foreign official of the International Labour Bureau, the latter waived immunity, and the Assistant Director of the Bureau having also declared the immunity waived, the tribunal held that it was competent to take cognisance of the suit "le domicile de fait du Sieur P. se confondant dès lors avec son domicile de droit."<sup>2</sup>

§ 837. The members of the Permanent Court of International Justice, which has its seat at The Hague, enjoy diplomatic

<sup>1</sup> Secretan, *op. cit.*, 92-3.

<sup>2</sup> *Ibid.*, 95-6.

privileges and immunities under Article 19 of the Statute of the Court, and the Registrar under Article 7 (4) of the Covenant of the League ; while an Agreement with the Netherlands Government of May 22, 1928, as shown below, extends to members of the Court the privileges accorded to heads of foreign diplomatic missions, and to the higher officials of the Court privileges similar to those of diplomatic officials attached to foreign legations, limited in the case of Netherlands subjects to acts done in their official capacity.

§ 838.

AGREEMENT BETWEEN THE PRESIDENT OF THE COURT AND THE  
NETHERLANDS GOVERNMENT, MAY 22, 1928

*General Principles*

I. The diplomatic privileges and immunities which, under Article 19 of the Statute of the Permanent Court of International Justice, the Netherlands authorities grant to the members of the Court, are the same as they accord in general to heads of missions accredited to Her Majesty the Queen of the Netherlands.

The special facilities and prerogatives which the Netherlands authorities grant, in general, to heads of missions accredited to Her Majesty the Queen of the Netherlands will be extended to the members of the Court.

As regards both diplomatic immunities and privileges and these special facilities, the registrar of the Court will be placed on the same footing as the members of the Court.

II. In view of Article 7, paragraph 4, of the Covenant of the League of Nations, the higher officials of the Court will be accorded, in principle, as regards diplomatic immunities and privileges, the same status as diplomatic officials attached to the Legations at The Hague.

III. The Permanent Court of International Justice will hold, in relation to the Netherlands authorities, a position similar to that of the Corps Diplomatique.

When the Corps Diplomatique and the Court are invited to attend Netherlands official ceremonies at the same time, the Court will rank immediately after the Corps Diplomatique.

IV. A member of the Court not a national of the Netherlands will be given precedence, in relation to the Netherlands authorities, as though he were an Envoy Extraordinary and Minister Plenipotentiary accredited to Her Majesty the Queen of the Netherlands.

The position of the registrar of the Court in this respect will be the same as that of the Secretary-General of the Permanent Court of Arbitration, as established by practice.<sup>1</sup>

<sup>1</sup> It was also agreed with the Netherlands Government that the status of the Secretary-General of the Permanent Court of Arbitration, as established by practice, is that of an international official.

V. The above principles will be supplemented and defined by rules of application.

*Rules of Application*

I.

I. Without prejudice to the rules previously laid down in communications from the Netherlands Ministry for Foreign Affairs and addressed to the authorities of the Court before November 1927, the principles governing the external status of the members and officials of the Court are supplemented and defined by the following provisions :

*A. Members and Registrar of the Court*

II.

1. *In general :*

As regards the precedence of the members of the Court among themselves, the Netherlands authorities will observe the regulations contained in the Rules of Court.

2. *Not of Netherlands nationality :*

- (a) The members and registrar of the Court will enjoy, when in Netherlands territory, the diplomatic immunities and privileges granted, in general, to heads of diplomatic missions accredited to Her Majesty the Queen of the Netherlands.
- (b) The wife and unmarried children of the members and registrar of the Court will share the status of the head of the family if they live with him and have no other occupation.
- (c) The private staff (governesses, housekeepers, private secretaries, servants, etc.) of the members and registrar of the Court will enjoy the same position as that accorded to the private staff of the heads of diplomatic missions accredited to Her Majesty the Queen of the Netherlands.

3. *Of Netherlands Nationality :*

The members and registrar of the Court will not be answerable in the local courts for acts done by them in their official capacity and within the limits of their powers. The salaries paid to them out of the budget of the Court will be exempt from direct taxes.

*B. Deputy-Registrar and Officials of the Court*

III.

1. *In general :*

- (a) The higher officials of the Court at present include, in addition to the deputy registrar, the drafting secretaries,

- (b) Any questions concerning the external status of all categories of officials of the Court shall, in case of doubt, be settled by referring, as far as possible, to the provisions duly approved by the competent authorities of the League of Nations for the corresponding officials of the League institutions established at Geneva.
- (c) The Netherlands authorities will not object to the competent authorities of the Court issuing identity cards to officials of the Court belonging to the various categories, so that these officials can, if need be, immediately furnish evidence of their external status according to the present principles and rules.

2. *Not of Netherlands nationality :*

- (a) The higher officials of the Court will enjoy, when in Netherlands territory, the diplomatic immunities and privileges granted in general to the diplomatic officials attached to the Legations at The Hague.
- (b) The wife and unmarried children of the higher officials of the Court will share the status of the head of the family if they live with him and have no other occupation.
- (c) The private staff of higher officials of the Court will enjoy the same position as that accorded to the private staff of diplomatic officials attached to the Legations at The Hague.
- (d) In the event of an official of the Court infringing a law or regulation, the registrar of the Court may, with the President's approval, after the case has been examined by the competent national authorities and a detailed report submitted to the registrar, waive the immunity accorded to the official.
- (e) As regards precedence in the case of higher officials of the Court, the deputy-registrar will be on the same footing as a councillor attached to a Legation at The Hague, and the drafting secretaries as secretaries attached to Legations at The Hague.

3. *Of Netherlands nationality :*

Higher officials will not be answerable in the local courts for acts done by them in their official capacity and within the limits of their powers. The salaries paid to them out of the budget of the Court will be exempt from direct taxes.

## CHAPTER XXXI

### THE LEAGUE OF NATIONS :—ARBITRATION, CONCILIATION, GOOD OFFICES, MEDIATION

§ 839. THE main purpose of the League of Nations, as set forth in the Preamble of the Covenant (§ 799), being the achievement of international peace and security by the acceptance of obligations not to resort to war, the Articles of the Covenant are mainly directed towards this end, and to the settlement of disputes which might endanger international peace and security.

§ 840. By Article 8 the members of the League recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety, and the enforcement by common action of international obligations.

By Article 10 they undertake to respect and preserve as against external aggression the territorial integrity and political independence of all the members ; in case of any such aggression, or any threat or danger thereof, the Council are to advise as to the means of fulfilling this obligation.

By Article 11, any war or threat of war, whether immediately affecting any of the members of the League or not, is a matter of concern to the whole League, which will take any action deemed wise and effectual to safeguard the peace of nations ; while it becomes the right of any member to bring before it any circumstance affecting international relations which threatens to disturb peace or good understanding.

By Article 12 the members agree that any dispute between them likely to lead to a rupture will be submitted either to arbitration or judicial settlement or to enquiry by the Council, and not to resort to war until three months after the award or judicial decision or report by the Council.

By Article 13 all disputes recognised as suitable for submission to arbitration or judicial settlement, which cannot be satisfactorily settled by diplomacy, are to be so submitted. Certain disputes are declared to be among those thus suitable. The members agree to carry out any award or decision

rendered, and not to resort to war against any member complying therewith ; while, in the event of failure to carry out such award or decision, the Council are to propose what steps should be taken.

Article 14 relates to the establishment of the Permanent Court of International Justice, which is competent to hear and determine any dispute of an international character submitted to it, and also to give an advisory opinion on any question referred to it by the Council or Assembly.

By Article 15 any dispute between members likely to lead to a rupture, and not submitted to arbitration or judicial settlement in accordance with Article 13, is to be submitted to the Council, who will endeavour to effect a settlement. The various circumstances which may arise, and the steps to be taken, are set forth. Or the Council may refer the dispute to the Assembly.

Article 16 relates to the measures to be taken against a member resorting to war in disregard of its covenants under Article 12, 13 or 15.

Finally, Article 17 has reference to disputes between states, one or all of which are not members of the League ; these are to be invited to accept the obligations of membership for the purposes of such dispute, the Council instituting an enquiry into the circumstances and recommending such action as may seem best and most effectual ; if such invitation is refused, measures to be taken are set forth.

§ 841. The foregoing Articles of the Covenant constitute its most important—indeed its essential—provisions, and they include and extend all previously recognised methods of composing international differences, and of averting war, which, as a matter of concern to the whole League, the League will take any steps wise and expedient to prevent.

§ 842. The Hague Convention for the Pacific Settlement of International Disputes contemplated four methods of settling such disputes, or of bringing to an end hostilities which might have ensued, viz., arbitration, international commissions of enquiry, good offices and mediation. That Convention, concluded in 1899 and revised in 1907, is still in force between the contracting states.

§ 843. With regard to arbitration, Article 15 of the Hague Convention of 1899 said :

“ International arbitration has for its object the settlement of differences between states by judges of their own choice, and on the basis of respect for law.”

Article 37 of the revised Convention of 1907 repeated this definition and added (by transfer from Article 18 of the 1899 Convention) :

“Recourse to arbitration implies an engagement to submit loyally to the award.”

§ 844. By the Hague Convention a Permanent Court of Arbitration was set up at The Hague, and many temporary arbitration tribunals have since been constituted thereunder or by agreements between states. By the League of Nations Protocol of December 16, 1920, the Permanent Court of International Justice has also been established at The Hague. Having regard to the desirability of recognising the difference between the award of a tribunal of arbitration and the judgment of a court of justice, the present editor of Oppenheim's “International Law” defines arbitration as follows :

“Arbitration in the broad sense means *the determination of a difference between states through the decision of one or more umpires or of a court chosen by the parties*. . . . Arbitration in the narrow sense of the term (and incidentally the sense familiar to Municipal Law) means *the determination of a difference between states by one or more umpires chosen, usually ad hoc, by the parties* ; and their decision is called an *award* ; whereas the decision of a court is called a *judgment*.”<sup>1</sup>

§ 845. For the settlement of a difference by arbitration an agreement may be concluded between the states concerned for the settlement by arbitration of that particular difference ; or a resort to arbitration may already have been provided for by a treaty between the parties for the settlement of differences in this manner. Instances of both kinds are mentioned in §§ 698–705. Earlier treaties were mostly of the former type.

§ 846. The Hague Convention of 1899 (revised in 1907) set up the Permanent Court of Arbitration, which, as Oppenheim remarked, “is not a real court of justice.”<sup>2</sup> Under the Convention the parties in dispute may agree to have recourse to the court, and an arbitral tribunal will thereupon be constituted to settle the difference ; or they may entrust the arbitration to one or more arbitrators selected by them, either from the members of the court, or in some other manner. The Contracting Parties reserved to themselves the right of concluding agreements, general or particular, with a view of extending compulsory arbitration to all cases they might consider it possible

<sup>1</sup> ii. § 12.

<sup>2</sup> (3rd ed.), i. § 476b.

so to submit. And the Convention also provided for the institution of international commissions of enquiry, to be constituted by special agreements between the parties, to facilitate the solution of disputes involving neither honour nor vital interests, by means of an impartial and conscientious investigation.

§ 847. Following the Hague Convention of 1899 many agreements were concluded between states regarding the settlement of certain classes of differences that might arise between them. On October 14, 1903, Great Britain entered into an agreement with France for the settlement by arbitration of differences, not settled by diplomacy, that might arise of a legal nature or relating to the interpretation of treaties, and not affecting the vital interests, the independence or the honour of the contracting states, or the interests of third parties. Similar agreements were concluded by Great Britain with a number of other states. Many countries entered into such mutual agreements.

§ 848. Later came treaty arrangements, such as those initiated by the United States in 1913, providing for investigation by permanent commissions of all disputes not settled by existing agreements or by diplomacy, the states concerned undertaking not to declare war or to begin hostilities during such investigation, and before the report of the commission was submitted.

§ 849. In the meantime certain states had begun to conclude agreements providing for the settlement by arbitration of all classes of disputes that might arise between them which were not settled by diplomacy. By 1917 many such agreements are said to have been concluded, and the number has since grown. Among them is one concluded between Great Britain and Uruguay on April 18, 1918.

§ 850. The institution of the League of Nations gave a great impetus to this movement, and at the present day large numbers of treaty arrangements—often described as a network—exist between various states, styled treaties of arbitration ; or of conciliation and arbitration ; or of conciliation, judicial settlement and arbitration ; combining these different methods of settlement ; and many of these are in respect of disputes of whatever nature that may arise. An instance is shown in § 592.

§ 851. The Protocol of December 16, 1920, concluded under the auspices of the League of Nations, in conformity with Article 14 of the Covenant, established the Permanent Court of International Justice at The Hague, the jurisdiction of

which is accepted by members of the League in accordance with the terms, and subject to the conditions, of the Statute of the Court. Article 1 of the Statute states that the Court is in addition to the Court of Arbitration organised by the Hague Conventions of 1899 and 1907, and to the special tribunals of arbitration, to which states are always at liberty to submit their disputes for settlement. It is, however, nominated in many recent treaties as the court before which particular matters therein provided for are to be brought.

§ 852. Under Article 36 of the Statute of the Permanent Court of International Justice the jurisdiction of the court comprises all cases which the parties refer to it, and all matters specially provided for by treaties and conventions in force ; while, under the same article, and on the lines proposed in Article 13 (2) of the Covenant of the League, members of the League and states mentioned in the Annex to the Covenant may declare that they recognise as compulsory *ipso facto*, and without special agreement in relation to any other member or state accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning :

- (a) The interpretation of a treaty ;
- (b) Any question of international law ;
- (c) The existence of any fact which, if established, would constitute a breach of an international obligation ;
- (d) The nature or extent of the reparation to be made for the breach of an international obligation.

Such declaration may be made unconditionally, or on condition of reciprocity on the part of several or certain members or states, or for a certain time. This declaration (§ 657), somewhat awkwardly styled the Optional Clause, seeing that it relates to the acceptance of compulsory jurisdiction, has up to the present been subscribed by about forty members, under varying conditions, and for different periods of time. The conditions on which it was accepted by Great Britain are shown in § 746.

§ 853. As instancing the various means of settlement which have thus been made available, there may be mentioned the Arbitration Conventions between Germany and four contiguous states which were signed in 1925 at the same time as the Treaty of Locarno, and which provide in different connections for reference to an arbitral tribunal, to a permanent conciliation commission, to an arbitral tribunal constituted in accordance with the Hague Convention of 1907, or to the Permanent Court of International Justice.

§ 854. As regards the efficacy of such methods of settlement, it has been said that in no case has a dispute once submitted to arbitration ended in war.

§ 855. Part II of the Hague Convention of 1899 (revised in 1907), which is still an effective instrument, though largely superseded by the Covenant of the League of Nations, laid down certain rules in regard to the exercise of good offices and mediation, which were subscribed to by the states parties to that Convention. These provisions have sometimes been criticised as not sufficiently distinguishing between the two subjects.

§ 856. Good offices are exerted in order to compose differences between two states, either (1) to avoid the exacerbation of hostile feeling threatening a rupture and possible resort to force, or (2) with the object of restoring peace between belligerents who are thought likely to welcome an opportunity of laying down their arms and concluding an honourable peace. The purpose of such good offices on the part of a friendly state, or it may be states, is, in the first case, to bring the contending parties together, and to make such suggestions as may facilitate the removal of causes of disagreement ; or, in the second case, the conclusion of peace. It is only in cases where the parties consent to the negotiations being conducted through the channel of the state which has offered good offices, that the good offices develop into mediation.

§ 857. Of the distinction between good offices and mediation Oppenheim writes :

“ Diplomatic practice frequently does not distinguish between good offices and mediation. But although good offices can easily develop into mediation, they must not be confused with it. The difference between them is that whereas *good offices* consist in *various kinds of action tending to call negotiations between the conflicting states into existence*, *mediation* consists in *direct conduct of negotiations between the parties at issue on the basis of proposals made by the mediator*. Good offices seek to induce conflicting parties, who are disinclined to negotiate, to do so ; or those who have negotiated without effecting an understanding, to renew the attempt. Good offices may also consist in advice, in submitting a proposal by one of the parties to the other, and the like, but states tendering them never take part in the negotiations themselves. On the other hand, a mediator is a middleman who does take part in the negotiations. He makes certain propositions on the basis of which the states at variance may come to an understanding. He even conducts the negotiation himself, always anxious to

reconcile the opposing claims and to appease the feeling of resentment between the parties. All the efforts of the mediator may often, of course, be useless, the parties being unable or unwilling to consent to an agreement. But if an understanding is arrived at, the position of the mediator as a party to the negotiations, although not a party to the difference, frequently becomes clearly apparent either by the drafting of a special act of mediation which is signed by the states at variance and the mediator, or by the fact that in the convention between the conflicting states, which embodies their understanding, the mediator is mentioned.”<sup>1</sup>

§ 858. Or, to quote another distinguished author,

“ Les anciens auteurs établissaient une distinction nette entre l’interposition des bons offices et la médiation. ‘ L’interpositeur ’ ou ‘ pacificateur ’ était le tiers qui s’interposait sans que son intervention eût été admise expressément par toutes les parties intéressées ; le “ médiateur ” était celui qui avait reçu un véritable mandat. Actuellement encore les deux institutions diffèrent et c’est même à tort qu’à la conférence de La Haye le projet rédigé par la délégation russe a prétendu ramener la distinction à une portée exclusivement théorique.

‘ Les bons offices, dit Alexandre Mérignac, se traduisent par des conseils, des actes, des négociations ayant pour but d’amener la paix, sans que la puissance de laquelle ils émanent s’engage dans l’examen approfondi du litige.’

‘ Le médiateur, dit Rivier, s’interpose entre les États en conflit ; il prend part aux négociations et même il les dirige. C’est par son intermédiaire que sont échangées les déclarations des parties. Il s’efforce de moyenner un arrangement amiable ; s’il y a guerre, d’amener la paix, sans toutefois avoir qualité pour l’imposer. Les États en conflit restent libres de ne pas accepter ses conseils. Son action s’exerce soit par des négociations d’État, soit dans des congrès ou conférences où le rôle principal lui est dévolu.’ ”<sup>2</sup>

§ 859. Certain instances of the past in which good offices or mediation were exerted in order either to avert, or to bring to an end, conflicts which had arisen between states were set out in the second edition of this work. It is not proposed, however, to recapitulate them here ; they, and others, are conveniently referred to in the books of writers on international law. All such methods of composing differences, or of bringing hostilities to an end, are open to the League of Nations, which, under Article 11 of the Covenant, may, in the event of any war or threat of war, whether immediately affecting any of the members of the League or not, take any action deemed wise and effectual to safeguard the peace of nations.

<sup>1</sup> ii. § 9.

<sup>2</sup> Nys, *Le Droit International*, iii. 59.

§ 860. On August 27, 1928, there was signed at Paris, on the initiative of the United States Government, an international Treaty for the Renunciation of War as an Instrument of National Policy<sup>1</sup>; this treaty became effective on July 24, 1929, by which time it had been ratified or acceded to by forty-six countries, including, besides members of the League of Nations, the United States, the Soviet Union and Turkey. Although not concluded under the auspices of the League, this treaty constitutes a noteworthy addition to the efforts of the League to avert international strife.

The terms of this treaty, after the recital of the heads of signatory states, continue :

“ Deeply sensible of their solemn duty to promote the welfare of mankind ;

Persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated ;

Convinced that all changes in their relations with one another should be sought only by pacific means and be the result of a peaceful and orderly progress, and that any signatory Power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this treaty ;

Hopeful that, encouraged by their example, all the other nations of the world will join in this humane endeavour and by adhering to the present treaty as soon as it comes into force bring their peoples within the scope of its beneficent provisions, thus uniting the civilised nations of the world in a common renunciation of war as an instrument of their national policy,

Have decided to conclude a treaty and for that purpose have appointed as their respective plenipotentiaries : [*names*] who having communicated to one another their full powers, found in good and due form, have agreed upon the following articles :

Art. 1.—The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

Art. 2.—The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

Art. 3.—The present treaty shall be ratified, etc.”

§ 861. As the outcome of the correspondence regarding the invitation addressed to His Majesty's Government in Great

<sup>1</sup> *Treaty Series*, No. 29 (1929) ; see also Brierly, *British Year Book of International Law* (1929), 208–10.

Britain by the Government of the United States to participate in the signature of this treaty, His Majesty's Secretary of State for Foreign Affairs addressed the following note to the United States chargé d'affaires.<sup>1</sup>

Foreign Office,  
July 18, 1928.

SIR,

I am happy to be able to inform you that after carefully studying the note which you left with me on the 23rd June, transmitting the revised text of the draft of the proposed treaty for the renunciation of war, His Majesty's Government in Great Britain accept the proposed treaty in the form transmitted by you and will be glad to sign at such time and place as may be indicated for the purpose by the Government of the United States.

2. My Government have read with interest the explanations contained in your note as to the meaning of the draft treaty, and also the comments which it contains upon the considerations advanced by other Powers in the previous diplomatic correspondence.

3. You will remember that in my previous communication of the 19th May I explained how important it was to my Government that the principle should be recognised that if one of the parties to this proposed treaty resorted to war in violation of its terms, the other parties should be released automatically from their obligations towards that party under the treaty. I also pointed out that respect for the obligations arising out of the Covenant of the League of Nations and of the Locarno treaties was the foundation of the policy of the Government of this country, and that they could not agree to any new treaty which would weaken or undermine these engagements.

4. The stipulation now inserted in the preamble under which any signatory Power hereafter seeking to promote its national interests by resort to war against another signatory is to be denied the benefits furnished by the treaty is satisfactory to my Government, and is sufficient to meet the first point mentioned in the preceding paragraph.

5. His Majesty's Government in Great Britain do not consider, after mature reflection, that the fulfilment of the obligations which they have undertaken in the Covenant of the League of Nations and in the Treaty of Locarno is precluded by their acceptance of the proposed treaty. They concur in the view enunciated by the German Government in their note of the 27th April that those obligations do not contain anything which could conflict with the treaty proposed by the United States Government.

6. My Government have noted with peculiar satisfaction that all the parties to the Locarno Treaty are now invited to become original signatories of the new treaty, and that it is clearly the wish of the United States Government that all members of the League

<sup>1</sup> *Parliamentary Paper, United States*, No. 2 (1928).

should become parties either by signature or accession. In order that as many States as possible may participate in the new movement, I trust that a general invitation will be extended to them to do so.

7. As regards the passage in my note of the 19th May relating to certain regions of which the welfare and integrity constitute a special and vital interest for our peace and safety, I need not repeat that His Majesty's Government in Great Britain accept the new treaty upon the understanding that it does not prejudice their freedom of action in this respect.

8. I am entirely in accord with the views expressed by Mr. Kellogg in his speech of the 28th April that the proposed treaty does not restrict or impair in any way the right of self-defence, as also with his opinion that each State alone is competent to decide when circumstances necessitate recourse to war for that purpose.

9. In the light of the foregoing explanations, His Majesty's Government in Great Britain are glad to join with the United States and with all other Governments similarly disposed in signing a definitive treaty for the renunciation of war in the form transmitted in your note of the 23rd June. They rejoice to be associated with the Government of the United States of America and the other parties to the proposed treaty in a further and signal advance in the outlawry of war.

I have, etc.

AUSTEN CHAMBERLAIN.

The passage in the note of May 19 which is referred to in paragraph 7 of the above note was as follows :

10. The language of Article 1, as to the renunciation of war as an instrument of national policy, renders it desirable that I should remind your Excellency that there are certain regions of the world the welfare and integrity of which constitute a special and vital interest for our peace and safety. His Majesty's Government have been at pains to make it clear in the past that interference with these regions cannot be suffered. Their protection against attack is to the British Empire a measure of self-defence. It must be clearly understood that His Majesty's Government in Great Britain accept the new treaty upon the distinct understanding that it does not prejudice their freedom of action in this respect. The Government of the United States have comparable interests any disregard of which by a foreign Power they have declared that they would regard as an unfriendly act. His Majesty's Government believe, therefore, that in defining their position they are expressing the intention and meaning of the United States Government.<sup>1</sup>

§ 862. In the meantime, on September 26, 1928, the deliberations of the League of Nations resulted in the framing

<sup>1</sup> *Parliamentary Paper, United States, No. 1 (1928).*

of a General Act for the Pacific Settlement of International Disputes,<sup>1</sup> which is open to accession by all the heads of states or other competent authorities of the members of the League and the non-members to which the Council of the League had communicated a copy for the purpose.

§ 863. This General Act, which bears a similar title to that of the Hague Conventions of 1899 and 1907, is a much more definite instrument than the latter. It divides into four chapters, respectively entitled Conciliation, Judicial Settlement, Arbitration and General, and these subdivide into 47 Articles, dealing with various contingencies, but its purport may be indicated by quoting the initial articles of each chapter.

Of Conciliation it is said :

“ Art. 1.—Disputes of every kind between two or more parties to the present General Act which it has not been possible to settle by diplomacy shall, subject to such reservations as may be made under Article 39, be submitted, under the conditions laid down in the present Chapter, to the procedure of conciliation.

Art. 2.—The disputes referred to in the preceding Article shall be submitted to a permanent or special Conciliation Commission constituted by the parties to the dispute.”

Of Judicial Settlement :

“ Art. 17.—All disputes with regard to which the parties are in conflict as to their respective rights shall, subject to any reservations which may be made under Article 39, be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal.

“ It is understood that the disputes referred to above include in particular those mentioned in Article 36 of the Statute of the Permanent Court of International Justice.”

Of Arbitration :

“ Art. 21.—Any dispute not of the kind referred to in Art. 17 which does not, within the month following the termination of the work of the Conciliation Commission provided for in Chapter I, form the object of an agreement between the parties, shall, subject to such reservations as may be made under Article 39, be brought before an arbitral tribunal which, unless the parties otherwise agree, shall be constituted in the manner set out below.”

General :

“ Art. 29.—Disputes for the settlement of which a special procedure is laid down in other conventions in force between the parties

<sup>1</sup> *Treaty Series*, No. 32 (1931) ; see also Brierly, *British Year Book of International Law* (1930), 119-33.

to the dispute shall be settled in conformity with the provisions of those conventions.

“The present General Act shall not affect any agreements in force by which conciliation procedure is established between the parties or they are bound by obligations to resort to arbitration or judicial settlement which ensure the settlement of the dispute. If, however, these agreements provide only for a procedure of conciliation, after such procedure has been followed without result, the provisions of the present General Act concerning judicial settlement or arbitration shall be applied in so far as the parties have acceded thereto.”

Articles 38 and 39 are as follows :

“Art. 38.—Accessions to the present General Act may extend :

A. Either to all the provisions of the Act (Chapters I, II, III and IV) ;

B. Or to those provisions only which relate to conciliation and judicial settlement (Chapters I and II), together with the general provisions dealing with these procedures (Chapter IV) ;

C. Or to those provisions only which relate to conciliation (Chapter I), together with the general provisions concerning that procedure (Chapter IV).

The Contracting Parties may benefit by the accessions of other Parties only in so far as they have themselves assumed the same obligations.

“Art. 39.—1. In addition to the power given in the preceding article, a Party, in acceding to the present General Act, may make his acceptance conditional upon the reservations exhaustively enumerated in the following paragraph. These reservations must be indicated at the time of accession.

2. These reservations may be such as to exclude from the procedure described in the present Act :

- (a) Disputes arising out of facts prior to the accession either of the Party making the reservation or of any other Party with whom the said Party may have a dispute ;
- (b) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States ;
- (c) Disputes concerning particular cases or clearly specified subject-matters, such as territorial status, or disputes falling within clearly defined categories.

3. If one of the parties to a dispute has made a reservation, the other parties may enforce the same reservation in regard to that party.

4. In the case of parties who have acceded to the provisions of the present General Act relating to judicial settlement or to arbitration, such reservations as they may have made shall, unless otherwise expressly stated, be deemed not to apply to the procedure of conciliation.”

§ 864. Great Britain acceded to all the provisions of this General Act on May 21, 1931, subject to the following conditions :

“(1) That the following disputes are excluded from the procedure described in the General Act, including the procedure of conciliation :

- (i) Disputes arising prior to the accession of His Majesty to the said General Act or relating to situations or facts prior to the said accession ;
- (ii) Disputes in regard to which the parties to the dispute have agreed or shall agree to have recourse to some other method of peaceful settlement ;
- (iii) Disputes between His Majesty's Government in the United Kingdom and the Government of any other Member of the League which is a member of the British Commonwealth of Nations, all of which disputes shall be settled in such manner as the parties have agreed or shall agree ;
- (iv) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States ; and
- (v) Disputes with any Party to the General Act who is not a Member of the League of Nations.

(2) That His Majesty reserves the right in relation to the disputes mentioned in Article 17 of the General Act to require that the procedure described in Chapter II of the said Act shall be suspended in respect of any dispute which has been submitted to and is under consideration by the Council of the League of Nations, provided that notice to suspend is given after the dispute has been submitted to the Council and is given within ten days of the notification of the initiation of the procedure, and provided also that such suspension shall be limited to a period of twelve months or such longer period as may be agreed by the parties to the dispute or determined by a decision of all the members of the Council other than the parties to the dispute.

(3)—(i) That, in the case of a dispute, not being a dispute mentioned in Article 17 of the General Act, which is brought before the Council of the League of Nations in accordance with the provisions of the Covenant, the procedure described in Chapter I of the General Act shall not be applied, and, if already commenced, shall be suspended, unless the Council determines that the said procedure shall be adopted.

(ii) That in the case of such a dispute the procedure described in Chapter III of the General Act shall not be applied unless the Council has failed to effect a settlement of the dispute within twelve months from the date on which it was first submitted to the Council, or, in a case where the procedure prescribed in Chapter I has been adopted without producing an agreement between the parties,

within six months from the termination of the work of the Conciliation Commission. The Council may extend either of the above periods by a decision of all its members other than the parties to the dispute.”<sup>1</sup>

Canada, Australia, New Zealand and India have acceded to all the provisions of the General Act subject to the same conditions as Great Britain. The Irish Free State has acceded without reservation.

§ 865. Up to the end of 1931 Belgium, Denmark, Estonia, Finland, France, Greece, Italy, Luxemburg, Norway, Peru and Spain have acceded to all the provisions of the Act, with, in the cases of Belgium, Estonia, France, Greece, Italy and Peru, certain reservations ; while the Netherlands and Sweden have acceded to Chapters I, II and IV, viz., Conciliation, Judicial Settlement and General.

<sup>1</sup> *Treaty Series*, No. 32 (1931).

## APPENDIX

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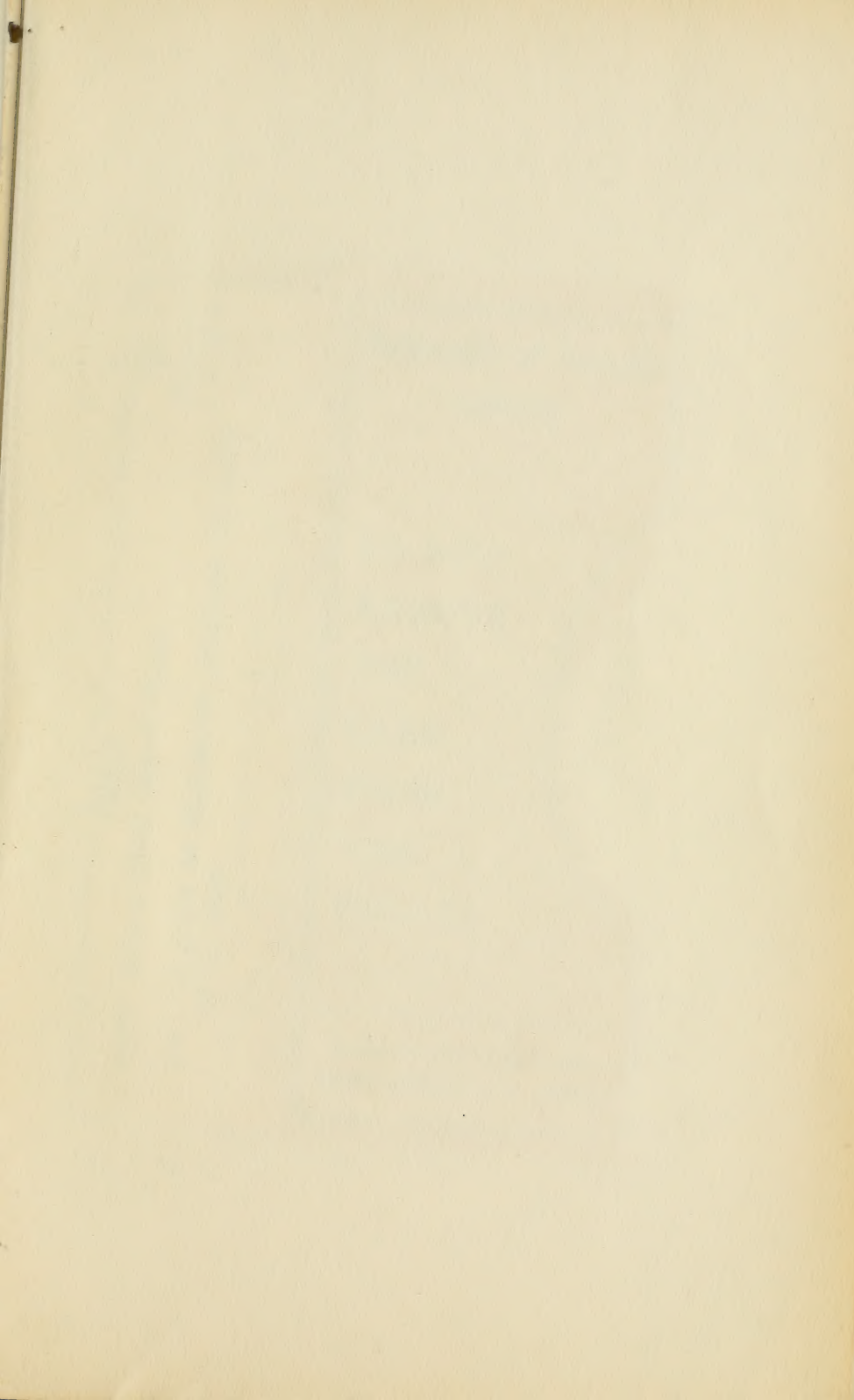
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